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# Proposals on Import Policy

A discussion paper  
proposing changes to  
Canadian import legislation

July 1980



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# Proposals on Import Policy

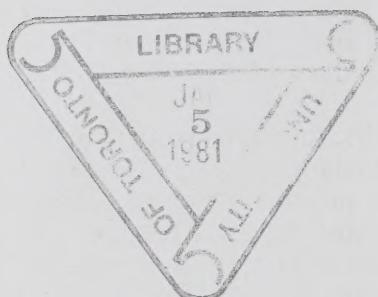
## A discussion paper proposing changes to Canadian import legislation

July 1980

# Processes on Import Policy

A discussion paper  
importation strategy to  
Canadian import legislation

July 1980



## FOREWORD

This discussion paper on import policy contains a number of proposals which I believe will contribute to Canada's strength as a producing and trading nation. The government looks forward to full discussion of these proposals. Following public discussion, a bill will be prepared for presentation to Parliament.

The government has decided that present Canadian legislation relating, in particular, to the imposition of anti-dumping and countervailing duties and the levying of surtaxes should be examined in view of significant developments in the international trading environment.

The proposed changes are designed to ensure that procedures in these areas will be efficient and speedy, fair and open to public view, and consistent with our general economic development objectives and our overall trading interests.

We have recently concluded a major and comprehensive multilateral trade negotiation (MTN) under the auspices of the General Agreement on Tariffs and Trade (GATT). The MTN agreements cover a wide range of tariffs and non-tariff measures affecting trade between Canada and our trading partners around the world. These new agreements will influence the international trading environment in the 1980s and beyond. International competition should increase as tariffs are lowered and non-tariff measures are brought under greater international discipline.

The MTN agreements, for the most part, are now in effect. One exception is the new international agreement relating to customs valuation which Canada has signed but will implement only by 1985, provided there are satisfactory negotiations in the GATT on necessary adjustments in our tariff rates to offset any losses in protection resulting from Canada's adherence to the new agreement. It is expected that Canada's major trading partners will implement this agreement this year.

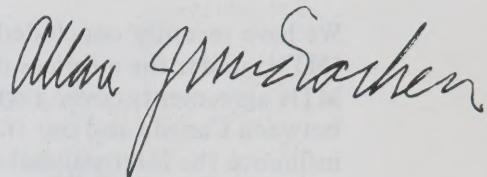
A healthy international trading environment is of great importance to Canadians. As a nation, we are heavily dependent on foreign trade, more so than many other industrialized nations. The MTN results are to be welcomed as an important element in our efforts to promote the efficient development of Canadian industry and to gain broader export opportunities for our manufacturers, primary producers, farmers and fishermen. Lower tariffs will lead to greater competition at home but they should also strengthen the competitive position of many of our producers by reducing the costs of imported materials and other production inputs. Lower tariffs will also benefit Canadian consumers.

The MTN non-tariff agreements clarify and expand the basic rules for international trade, including the types of measures governments can use to deal with injurious imports. Canada could continue to meet its basic international obligations relating to injurious imports without any changes in domestic law. However, changes are required if we are to take full advantage of our rights under the GATT, including rights provided for under these new agreements.

Consultations with the provinces and with the private sector during the MTN pointed up certain shortcomings in existing Canadian legislation in these areas. There have also been complaints that current procedures are too slow and too costly in dealing with injurious imports. It is the government's belief that Canada's procedures for dealing with injurious imports should be as responsive, efficient and effective as those of our major trading partners.

This paper presents specific proposals for improvements in our import legislation and in import procedures. It does not contain proposals for changes in the existing institutional framework, although the proposals, including those concerning countervailing duties legislation, provide for a somewhat broader role for the Anti-dumping Tribunal than at present. For this reason, it is proposed that the Tribunal's name be changed to the Canadian Import Tribunal.

The government wishes to be fully informed of the views of interested parties before introducing new legislation in Parliament. I would invite all interested parties to study the attached proposals and to submit their views on these and other related matters.



Minister of Finance

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Annex IV, *Anti-dumping and Countervailing Measures*, contains an elaboration of the GATT rules concerning proposed action to combat dumping and countervailing. Nonetheless, it may nevertheless be necessary to amend existing legislation to provide for the adequacy of Canada's existing estimation and procedures for applying emergency import measures.

Annex IV also specifies that measures described within the legislation which are proposed to combat dumping or countervailing may be taken by either suspending the use of Canada's preferential trading rights or by suspending the right to enter certain imports. In this area, new measures have been introduced by the GATT for the settlement which, for example, certain countries would be obliged to take in order to take countervailing measures. Canadian legislation would allow the taking of such countervailing in these circumstances.



# INTRODUCTION

There are a variety of situations in which Canada, like other countries, finds it necessary to provide special protection for domestic producers in addition to that provided by the regular tariff. At present such action is possible through the use of: (a) anti-dumping duties to counter the injurious effects on Canadian producers arising from exports to Canada at prices below those in the country of export; (b) countervailing duties to offset the injurious effects on Canadian producers of foreign government subsidies on exports to Canada; and (c) emergency safeguard actions. The latter include surtaxes or quotas imposed on imports which, although not necessarily dumped or subsidized, are causing or threatening serious injury to domestic producers.

The General Agreement on Tariffs and Trade (GATT) sets out the circumstances under which action can be taken by member countries in these special situations and the nature of the action permitted. It includes rules on the use of subsidies which may adversely affect the trading interests of other countries. While the basic GATT provisions remain unchanged, two agreements were negotiated in the Multilateral Trade Negotiations (MTN) to clarify and, in certain respects, strengthen the rules with respect to measures against dumped or subsidized imports as well as rules on the use of subsidies in general. The Agreement on Anti-dumping Duties is a revision of the original Anti-dumping Code of 1968. The Agreement on Subsidies and Countervailing Duties is new.

Canada can meet its basic obligations under these agreements without any changes in domestic legislation. However, if Canada is to equip itself to take full advantage of its rights under the GATT, particularly as set out in the new agreements, certain amendments to existing legislation will be required.<sup>1</sup>

Agreement was not reached in the MTN on an elaboration of the GATT rules on emergency safeguard action but discussions are continuing. Nonetheless, in any comprehensive revision of import legislation it is appropriate to review the adequacy of Canada's existing provisions and procedures for dealing with emergency import situations.

Apart from the three types of trade measures described above, new legislation is proposed to permit Canada to respond more effectively to actions which may be taken by other countries that impair Canada's international trading rights or unjustifiably harm Canada's economic interests. In this area, new procedures have been introduced in the GATT for dispute settlement which, for example, permit a country whose rights are judged to have been impaired, to take countermeasures. Canadian legislation should allow for the taking of such countermeasures in these circumstances.

<sup>1</sup> See Annex I for a description of Canada's GATT rights and obligations in the area of anti-dumping and countervailing duties and emergency import safeguard measures; Annex II for a description of Canada's existing legislation in these areas; and Annex III for charts which illustrate the present and proposed Canadian anti-dumping and countervailing systems.



# PROPOSALS

The proposals deal with three broad issues: (I) anti-dumping and countervailing duties, (II) safeguards, and (III) responses to actions, policies or practices of other governments which adversely affect Canadian trade in goods and services. The Canadian import legislation to which the proposals relate includes the Anti-dumping Act of 1968, the Customs Tariff and the Export and Import Permits Act. It is proposed that a new act, entitled the Special Import Measures Act, replace the current Anti-dumping Act and Section 7 of the Customs Tariff which now deals with countervailing duties.

## **(I) Anti-dumping and Countervailing Duties Legislation**

*Proposal 1: The anti-dumping and countervailing duties legislation should place specific time limits on the various stages in the investigation of dumping or of subsidization as well as in the conduct of injury inquiries. To complete cases more rapidly, the Department of National Revenue's investigation of dumping and subsidization and the Tribunal's<sup>1</sup> inquiry into injury should coincide to a greater extent than at present.*

Before anti-dumping or countervailing duties can be imposed, a government, under the international agreements, must establish that dumping or subsidization of imports is occurring and that such imports are injuring or threatening to injure domestic producers or are retarding the establishment of a domestic industry.<sup>2</sup> Under Canadian law the administrative task of investigating dumping or subsidization is carried out by the Department of National Revenue, Customs and Excise (National Revenue) and the quasi-judicial task of inquiring into injury by the Tribunal. In carrying out the preliminary stages of its investigation, National Revenue also must satisfy itself that there is evidence of injury.

There are currently no time limits provided in legislation for dumping or subsidy investigations undertaken by National Revenue. However there are ministerial guidelines which apply to anti-dumping cases.<sup>3</sup> Under these guidelines, National Revenue must decide, within one month of receipt of an adequately documented complaint, whether a case of dumping and injury exists and, if so, to initiate a formal investigation. The guidelines provide that National Revenue should normally complete its preliminary investigation of dumping within six months of initiation. If a preliminary determination of dumping is made, provisional duties are imposed and the case is referred to the Tribunal. The Tribunal is required by law to render its finding on injury within 90 days. If the Tribunal finds injury, National Revenue then makes a final determination of the amount of dumping.

In administering the Countervailing Duty Regulations, the object is to complete investigations within a period similar to that for anti-dumping cases.

<sup>1</sup> Tribunal refers to the Anti-dumping Tribunal. In the draft legislation it is proposed that it be renamed the Canadian Import Tribunal.

<sup>2</sup> Throughout this paper the term "injury" in association with anti-dumping or countervailing duties legislation will refer to injury, threat of injury or retardation.

<sup>3</sup> Published in 1977.

It is now proposed that the time limits relating to the various stages in the investigation and inquiry process be clearly set out in legislation. As at present, National Revenue would have one month from receipt of a properly documented written complaint to decide whether to initiate an investigation. National Revenue would continue to inform complainants of the information and evidence it required and would assist them in preparing their submissions.

Once an investigation had been initiated, National Revenue would be allowed, in normal circumstances, up to 90 days to decide whether to issue a preliminary determination. If National Revenue decided during that period that there was insufficient evidence of dumping or subsidization, or that the dumping or subsidization was negligible or that there was no evidence that it had caused injury, then National Revenue could terminate the case. If, however, the decision was that there was sufficient evidence to proceed with the case, National Revenue would issue a preliminary determination of dumping or subsidization and provisional duties would be imposed. National Revenue would then have up to 90 days to complete its investigation of the extent of dumping or subsidization and to issue a final determination.

Following the preliminary determination, the Tribunal would begin its inquiry into injury and on receipt of the final determination of dumping or subsidization by National Revenue the Tribunal would begin its public hearings promptly. As soon as possible after the final determination and in any case within 120 days after the preliminary determination, the Tribunal would issue its finding on whether injury existed. If it so found, anti-dumping or countervailing duties would be collected.

These proposals would reduce the maximum time permitted to complete an investigation and injury inquiry to eight months in normal cases, compared with up to 10 months at present. In exceptional circumstances, National Revenue would be allowed a further 45 days to continue its investigation before deciding whether to issue a preliminary determination.

In recent years National Revenue has improved its administrative procedures for handling anti-dumping cases and these efforts will be continued. However, there are a number of advantages in providing in legislation for specific time limits:

- i) Legislated time limits should help reduce uncertainty for all parties concerned. Although the interests of Canadian producers and Canadian importers are generally opposed in anti-dumping or countervailing cases, both parties are concerned that decisions be reached promptly.
- ii) The proposed system would ensure prompter decisions. Decisions on provisional duties would be taken, in normal cases, within four months of receipt of a properly documented complaint, as against four to seven months now. In exceptional circumstances, provisional duties would be imposed within 5 1/2 months, as compared to up to 10 months at present. Provisional duties could be applied for up to four months as against the current three months.
- iii) In the absence of legislated time limits, it may sometimes be to an exporter's advantage to delay providing information which might trigger the imposition of provisional duties. The longer the delay, the greater the opportunity for an exporter to make pre-emptive shipments. Legislated time limits should encourage foreign exporters to cooperate more readily with National Revenue in its investigations.

*Proposal 2: The new anti-dumping and countervailing duties legislation should permit the suspension of investigations if price undertakings have been accepted by National Revenue from exporters who are dumping, or price or quantitative undertakings from exporters and their governments in the case of subsidized exports to Canada.*

The Anti-dumping Code of 1968 provided that governments could terminate anti-dumping proceedings upon receipt of a voluntary undertaking by an exporter to increase prices to eliminate the margin of dumping. The experience of other countries suggests that undertakings, in many instances, can result in more expeditious and less costly solutions to dumping cases.

Undertakings are intended to eliminate the injury caused by dumped or subsidized imports more quickly than would be possible if there were a full investigation and inquiry. This procedure is also intended to reduce the burden on interested parties, both in time and expense, which results from a full-scale investigation and inquiry.

The Anti-dumping Act of 1968, which implemented the international code in Canadian law, did not provide for the acceptance of price undertakings. The acceptance of undertakings did not seem appropriate at that time since it was considered that the determination of injury should be made by an independent tribunal in all cases. Moreover, the code provided only for termination of anti-dumping proceedings on acceptance of an undertaking. There was no provision for suspension of the proceedings. Also the code was silent on how undertakings were to be monitored and on procedures for dealing with violations. If an undertaking was accepted and subsequently violated there was no provision for resuming the investigation other than by starting the whole investigatory process again from the beginning.

The undertaking provisions in the new Anti-dumping Agreement have been expanded and improved in a number of ways. They now provide for the suspension of proceedings upon receipt from exporters of satisfactory undertakings to revise their prices. Moreover, the new agreement includes provisions for monitoring undertakings and retroactive application of duties where undertakings are violated. Similar provisions have also been incorporated in the new Subsidies and Countervailing Duties Agreement. In addition, the latter agreement permits the acceptance from exporters' governments of undertakings, such as undertakings to limit the quantities of subsidized goods shipped to Canada. Undertakings from exporters' governments to reduce or eliminate the subsidy may also be accepted.

It is now proposed that Canadian legislation allow for the acceptance of undertakings in both anti-dumping and countervailing cases. Under the proposed system, National Revenue would be responsible for accepting and monitoring undertakings. It could accept undertakings at any point between the initiation of an investigation and a preliminary determination of dumping or subsidization.

To accept an undertaking, National Revenue would have to be satisfied that the undertaking would eliminate the injury to Canadian producers. For this reason, National Revenue would accept an undertaking only if it was given by or on behalf of exporters representing "substantially all" of the trade in the product under investigation. In the absence of an undertaking, all exporters would continue to be involved in National Revenue's investigation and the Tribunal's inquiry. However, as in any normal anti-dumping case, individual exporters who wished to do so would be free to revise their prices to eliminate dumping and so avoid being assessed anti-dumping duties. In subsidy cases, duties would normally be assessed equal to the amount of the subsidy. However, if the government concerned eliminated the injurious effects of its subsidy program on Canadian producers, the Governor in Council could decide to waive duties.

Before deciding to accept an undertaking, National Revenue would also have to consider whether it constituted a practical solution to the problem at hand. This question would be particularly relevant in situations involving a range of goods or a large number of exporters or countries. It is envisaged that price and quantitative undertakings would contain provisions to require the exporters (and possibly the importers) to provide sufficient information to National Revenue to enable it to monitor the undertakings effectively. Upon acceptance of an undertaking, National Revenue would suspend the investigation, issue a preliminary determination and publish a notice. Provisional duties would not be payable as long as the undertaking remained in force.

While the new international agreements meet many of Canada's original concerns about undertakings, there still would be a need for special procedures to ensure adequate protection for the rights of all parties concerned. Such procedures would be especially important, since an undertaking might be accepted at an early stage of an investigation and it might cover less than the full amount of the subsidy or the full margin of dumping.

Prior to accepting an undertaking, National Revenue would be directed, in accordance with Canada's international obligations, to consult with directly interested parties, i.e., the complainants, the importers, exporters and, in countervailing cases, foreign governments. Moreover, within 30 days of the notice of the acceptance of an undertaking, the directly interested parties or National Revenue could request the Tribunal to conduct an injury inquiry. Other parties which might be concerned with the undertaking (e.g., consumer and user groups) could make representations to National Revenue during the 30-day period and these representations could result in National Revenue requesting the Tribunal to conduct an injury inquiry. The Tribunal would have 120 days to issue its finding while National Revenue would proceed to a final determination within 90 days of any such request. During this period no provisional duties would be applied as long as the undertaking was being honoured. A finding by the Tribunal, however, would automatically terminate the undertaking. In the case of an "injury" finding, anti-dumping or countervailing duties would become payable. A "no injury" finding would terminate the case.

National Revenue could review an undertaking at any time, either on its own initiative or following the receipt of a substantiated request by any directly interested party. Where National Revenue considered that an undertaking had been violated by one or more exporters, a notice of termination of the undertaking would be published. National Revenue would then resume its anti-dumping or countervailing duty investigation. Provisional duties would be collected as of the date of such notice. Duties could be assessed on dumped or subsidized imports retroactively up to a maximum of 90 days prior to the date of the notice of the termination. National Revenue would have 90 days after notice of termination of an undertaking to make a final determination or terminate the investigation. Where the case continued, the Tribunal would complete its injury inquiry as soon as possible but in any case within 120 days of the notice of termination of the undertaking.

National Revenue might decide to terminate an undertaking if information came to its attention which, if it had been known at the time the undertaking was accepted, would have led National Revenue not to accept the undertaking. For example, this could arise if new exporters were to appear who were dumping the same product covered by the undertaking and who were not willing to join the undertaking. National Revenue could also decide to terminate an undertaking and all other proceedings if it considered the undertaking was no longer needed, e.g., if the goods were no longer being shipped to Canada.

*Proposal 3: The new countervailing duties procedures should generally parallel the anti-dumping procedures.*

Existing procedures respecting the bringing of complaints, the launching of investigations by National Revenue and the conduct of inquiries by the Tribunal are similar in both anti-dumping and countervailing duties cases. However, there are at least three significant differences at present between anti-dumping and countervailing duties procedures. First, countervailing duties, even provisional duties, may only be imposed by Order in Council. By contrast, anti-dumping duties are payable following a finding of injury by the Tribunal. Second, since countervailing duties are intended to offset a subsidy given by another government, consultations are held with the government of the exporting country before duties are levied. In practice, foreign governments are notified before the initiation of an investigation. There is no counterpart in the case of anti-dumping investigations. Finally, countervailing duties at present can only be applied against goods of a "class or kind made or produced in Canada". Effectively this means that Canadian producers must supply at least 10 per cent of the domestic market. Under the proposed legislation, the concept of "class or kind" would be dropped so that countervailing duties could be applied even in cases where the injured domestic industry had only a small share of the market or where subsidized imports were materially retarding the establishment of a domestic industry.

The proposed changes to the countervailing duties procedures would bring them into closer alignment with the anti-dumping system. Under the proposed arrangements, countervailing duties, as currently is the case for anti-dumping duties, would normally be imposed on a finding of injury by the Tribunal. The Governor in Council would no longer be required to decide in each countervailing case whether or not to impose duties. The Governor in Council would, however, have the power to exempt certain goods from the application of the act and could also make use of the authority under Section 17 of the Financial Administration Act to remit duties.

There would also be provision for the acceptance of undertakings as outlined above (see Proposal 2). In anti-dumping cases, undertakings would take the form of price undertakings from exporters. In countervailing cases, National Revenue could accept price undertakings from exporters with the consent of their governments. It could also accept from foreign governments quantitative undertakings or undertakings to eliminate or reduce subsidies or to eliminate their injurious effects.

In line with the general thrust of this proposal, where there are both dumping and countervailing investigations in respect of the same goods but from different countries, the draft legislation will enable National Revenue to issue a common preliminary determination so that both may be considered simultaneously by the Tribunal for the purpose of determining injury. This will ensure that interested parties will not be required to bear the cost of appearing twice before the Tribunal where a complaint results in a finding by National Revenue of both dumping and subsidization.

Although it is not proposed to provide in the legislation as such for consultations with governments affected by a countervailing duties investigation, Canadian procedures, in conformity with the new GATT agreement, will permit consultations prior to initiation and during the course of an investigation. All consultations would take place within the proposed time limits for completing a countervailing duties case.

*Proposal 4: The new anti-dumping legislation should provide authority for the establishment, in exceptional circumstances, of a "basic price system".*

Under both the original Anti-dumping Code and the new Anti-dumping Agreement, countries are permitted to establish a so-called "basic price system" when imports are being dumped by several suppliers from one or more countries and these imports are causing injury. "Basic prices" are determined by reference to the "lowest normal price" in any supplying country where normal conditions of competition prevail. If imports are priced below this "basic price", an anti-dumping duty equal to the difference between the basic price and the export price is levied. Exporters in any country can, however, at any time request an investigation if they consider and can substantiate that they are not dumping or that the so-called "basic price" is inappropriate. An exporter, for example, might demonstrate that the domestic price of his product is below the basic price and therefore his lower domestic price should be adopted as the basic price.

The European Community in 1977 adopted a system of basic prices to provide for the immediate collection of anti-dumping duties on steel imports entering below those prices. The United States had similar problems with steel imports but used a different system. It established a so-called "trigger price" system. If import prices were below that level this led to quick initiation of regular anti-dumping proceedings. Canada established a monitoring or benchmark system of prices somewhat similar to the United States trigger price system.

It is for consideration whether there should be legislative authority to use a basic price system in certain instances. Such a system could result in more expeditious procedures than are possible under regular anti-dumping procedures, and hence afford speedier protection for Canadian producers. The alternative, in the absence of such provisions, would be to use monitoring or trigger prices as both Canada and the United States did in the case of steel. The United States has not incorporated a specific basic price provision in its new anti-dumping legislation.

There are certain situations in which a basic price system might be useful. One example is where a wide range of products is produced in a single industry and the taking of anti-dumping action against a particular product may not be effective since the exporters could simply dump an alternative product. A second example is where a product is shipped to Canada by a large number of individual exporters or from a large number of countries. In these cases regular anti-dumping investigations on a company by company basis may lead to unreasonable delays in completing the investigation. Finally, in cases where one or more of Canada's major trading partners are using a basic price system, it may be useful to have the power to put into effect a similar system if there is a danger of diversion of dumped exports to the Canadian market.

The legislation, however, should provide for careful circumscription of such powers to ensure that they are used sparingly and would not lead to more protection than is warranted. The proposed legislation provides that basic prices could only be established in exceptional circumstances where there was very strong evidence of dumping and injury.

Under the proposal, if in the course of a regular anti-dumping investigation or investigations National Revenue officials reached the view that the regular anti-dumping procedures were impractical, they could ask the Minister of National Revenue, with the concurrence of the Minister of Finance, to recommend to the Governor in Council that a basic price system be established for particular products. The Governor in Council would then have to decide whether National Revenue should be authorized by Order in Council to determine basic prices for any of the products on which a preliminary determination had not yet been made.

If the Governor in Council did authorize a basic price system, any anti-dumping investigations already initiated involving the same products would be terminated. However, if a preliminary determination had been made with respect to a particular product or products, the regular anti-dumping procedures would continue for that product or products. The Order establishing the basic price system would be published in the Canada Gazette and interested parties would be notified. The Order could be amended subsequently to exclude from it goods, or exporters or exporting countries previously covered.

The lowest normal value in any supplying country would be used to establish the basic price and this would be based on prices prevailing at the time of the investigation. Duties payable would equal the difference between the “lowest normal price”, (i.e. the basic price) and the export price. The basic prices could be reviewed and adjusted where appropriate at any time either at the initiative of National Revenue or at the request of an exporter or importer. The importer would also have recourse to the regular appeal procedures.

As a further safeguard to the public interest and to protect the rights of the parties directly concerned, any Order in Council establishing a basic price system would cease to have effect, at the latest, 365 days after it was made. The Order could be extended for further periods of up to 365 days but only if, prior to each such period, the Tribunal, following an inquiry at the request of the government, had determined that injury continued to exist.

*Proposal 5: The criteria for finding injury and the new definition of “regional industry” contained in the international Agreements on Anti-dumping Duties and on Subsidies and Countervailing Duties should be taken into account by the Tribunal.*

The injury criteria in the new agreements expand on those in the original Anti-dumping Code. The new agreements require the investigating authorities to carry out an objective examination of (a) the volume of subsidized or dumped imports and their effects on prices in the domestic market for like products and (b) the impact of these imports on domestic producers of like products. Injury from other causes, such as changes in consumer tastes or higher costs, must not be attributed to the dumped or subsidized imports.

Under the new agreements an important change in these general criteria is that dumping or subsidization does not need to be the “principal cause” of injury in order to constitute “material injury”. The concept of material injury itself is not precisely defined in either the GATT or in the new agreements. While the agreements list factors which illustrate what is meant by the term, they point out specifically that neither “one or several” of these factors necessarily can be taken as giving decisive guidance. Material injury can clearly manifest itself in different ways in different circumstances. For these reasons, it would seem preferable to continue to be guided by the general injury criteria contained in the international agreements without attempting to define the term “material injury” separately in Canadian legislation.

The injury criteria in the Subsidies and Countervailing Duties Agreement contain a special provision relating to agricultural trade. Under this agreement, one of the tests of injury is whether subsidized imports have resulted in an “increased burden on government agricultural support programs”. Given the wide variety of agricultural support programs used by other countries and the impact these can have on our own agricultural marketing and stabilization systems, it would seem prudent that Canada be equipped to deal with these situations in a more flexible manner. It is proposed that the Tribunal should be empowered to take into account in its assessment of injury, where relevant, the impact on Canadian agricultural support programs of imports of agricultural products which have benefitted from foreign subsidies.

One further legislative change which touches on the injury criteria is proposed. The Anti-dumping Act now makes reference, for purposes of determining injury on a regional basis, to the definition of a “regional industry” set out in the Anti-dumping Code. The revised Anti-dumping Agreement and the new Subsidies and Countervailing Duties Agreement contain a new definition of “regional industry”. Under the old definition, it was difficult, if not impossible, to identify an industry as regional unless it was clearly separated from all other regions by transportation costs. The new definition would allow for the recognition of an industry as regional if producers in an area sold all or almost all of their production in that market and the demand in the market was not to any substantial degree supplied by producers located elsewhere in the country. In situations where injurious dumping or subsidization is found on a regional basis, the agreements permit that application of duties may be restricted to the injurious imports into the affected region. The rules also permit the acceptance of undertakings from exporters or, in the case of subsidized imports, from exporters and their governments in respect of goods entering the region at dumped or subsidized prices.

There have been no anti-dumping cases to date in Canada involving a so-called regional industry. If such a finding was made, it would be possible to restrict the application of duties to the affected region. This could be done through the remission of anti-dumping duties on imports entering regions of Canada other than that where the injury was occurring. The same procedure could be used in countervailing duty cases.

Separate from the regional industry question is the issue of the “regional user”. Requests are sometimes made for exemptions from anti-dumping or countervailing duties for imports entering particular regions or parts of the country where it is claimed that domestic producers are unable or unwilling to supply the goods, or cannot do so in a timely fashion. This situation in a sense is the reverse of the “regional industry” case described above. It involves a request for exemption from nationally-applied duties rather than for the application of duties on a regional basis. The general authority of the Governor in Council to grant remissions of duties and taxes under the Financial Administration Act provides a remedy in cases where it is judged necessary to provide this sort of relief.

## **(II) Safeguard Actions Against Injurious Imports**

*Proposal 6: Existing Canadian legislation permitting imposition of import quotas based on an injury finding by the Textile and Clothing Board (TCB) or the Tribunal should be maintained. However, there should also be provision to place products on the import control list for monitoring purposes based on a recommendation of the Tribunal or the TCB.*

It is clear that the government must be in a position to take effective and timely safeguard action against imports which, although not necessarily dumped or subsidized, cause or threaten “serious” injury to Canadian producers of like goods.<sup>1</sup> The current domestic arrangements, which allow the Governor in Council to apply either surtaxes under the Customs Tariff or import quotas under the Export and Import Permits Act, have worked reasonably well, although some changes may be appropriate.

The existing authority under the Export and Import Permits Act does not permit the imposition of import quotas in the absence of an injury inquiry and finding by the TCB or the Tribunal. Quotas therefore cannot be used in situations where immediate import relief is required. In these instances, surtaxes provide a suitable alternative. It may be argued that there could be emergency situations where import quotas would be a more appropriate form of relief than increased tariffs or surtaxes. However, the imposition of import quotas is usually administratively complex and cannot be done quickly. For this reason quotas have tended to be used in cases where Canadian producers required somewhat more time to adjust to new competitive conditions. In these situations, the problems were usually structural and hence the requirement for a study by an independent body before action was undertaken seemed to be appropriate.

While no alteration to quota or surtax power is proposed in this context it might be useful to allow for more extensive use of import surveillance. There have been instances where the TCB has recommended that products be placed on the import control list for purposes of surveillance. However the Export and Import Permits Act only permits the inclusion of products on the Import Control List for purposes of surveillance in clearly defined circumstances, e.g. if there is an intergovernmental agreement covering the product in question. It would be desirable to broaden this authority somewhat to permit more expeditious action to limit imports if this appeared necessary on the basis of information obtained through monitoring import flows. Accordingly, it is proposed that Section 5(2) of the Act be amended to allow the Governor in Council to add products to the list for monitoring purposes following a report by the Tribunal or the TCB that imports of the products were causing or threatening serious injury to Canadian producers.

*Proposal 7: Section 8 of the Customs Tariff should be amended to permit surtaxes to stay in effect for more than 180 days without parliamentary approval in cases where the Tribunal or, where appropriate, the TCB finds, on a reference by the government, serious injury or threat of serious injury to Canadian producers.*

The authority of the government to impose surtaxes by Order in Council for periods up to 180 days provides an effective way of dealing with certain emergency import situations, especially where the problems are short-term in nature and price related. The current

<sup>1</sup> In contrast to the concept of “material injury” which is embodied in the GATT provisions on anti-dumping and countervailing duties, GATT Article XIX on emergency safeguard action on imports makes use of the concept of “serious injury”. This concept implies a somewhat greater degree of injury than does material injury.

legislation requires that any extension of the surtax beyond 180 days receive parliamentary approval. However, there may be cases where surtaxes would provide a more effective remedy than quotas for dealing with somewhat longer-term structural problems. It would therefore seem appropriate to allow the government to extend a surtax beyond 180 days in cases where, prior to the expiry of 180 days, there had been a finding of injury following a reference by the government to the Tribunal or, where appropriate, the TCB. If this power were granted it would also make sense to provide authority to impose a surtax in the first instance for longer than 180 days where the Tribunal or the TCB made a prior finding of injury or a threat of injury. The requirement to secure an injury finding by an independent body before making use of surtaxes for periods longer than 180 days would ensure that such measures were adopted only when justified.

The proposed approach would not alter the current provision for parliamentary review where no reference on the question of injury or threat of injury was made to the Tribunal or the TCB. As a further safeguard, provision could be made in the legislation to the effect that any continuation of surtax measures beyond 180 days could be terminated by a negative resolution of Parliament.

*Proposal 8: The legislative authority for applying surtaxes should also permit the application of surtaxes after certain quantities of a product have been imported.*

There may be cases where it is evident that imports of a particular product would not cause or threaten serious injury unless and until import volumes reached a certain level. Moreover, in cases where a surtax has been authorized for an extended period, it may be desirable to allow certain quantities to be imported exempt from the surtax (i.e., at the normal tariff rate). The surtax-exempt quantity could be increased periodically as a means of phasing out the surtax over time.

To provide this sort of flexibility in the application of surtaxes, an amendment to Section 8 of the Customs Tariff is proposed to permit the Governor in Council to link a surtax to the quantity of goods imported. The system would operate in a manner similar to the tariff rate quotas which some of Canada's trading partners utilize for certain products. The experience of these other countries demonstrates that such measures have to be carefully designed and administered to provide as much fairness as possible in terms of the allocation of surtax-exempt imports. Care must also be taken to avoid disruption of the domestic industry caused by import "bunching" (i.e., a concentration of imports at the beginning of the quota period resulting from efforts by importers to avoid the surtax). It should be noted that since the proposed technique would involve applying a surtax over and above the bound tariff rate, use of the measure would have to be justified, as would any import safeguard measure, under GATT Article XIX and would be subject to the sanctions provided for in that article.

*Proposal 9: The legislation should provide specific authority for Canada to take safeguard measures for balance of payments purposes.*

An aspect of emergency safeguard action, which should be distinguished from quotas or surtaxes on imports of specific goods causing injury, is the right of countries under Article XII of the GATT to restrict the quantity or value of imports in defined circumstances in order to deal with general balance of payments problems. The measures must not exceed what is judged necessary to meet an imminent threat of a serious decline in a country's official international monetary reserves or to permit a reasonable rate of increase in the reserves if they are already very low. With flexible exchange rates, such powers may have less relevance than in the past. Nevertheless, a number of members of the GATT have domestic legislative authority to impose such restrictions.

There is at present no specific provision in the Customs Tariff for imposition of surcharges for balance of payments reasons. When surtaxes were last imposed in 1962, a somewhat roundabout procedure was followed. First, the Most-Favoured-Nation (MFN) and British Preferential (BP) tariff rates on certain categories of goods were temporarily withdrawn and the much higher General Tariff applied. Then, by selective use of the remission power under the Financial Administration Act, the government was able to set effective rates which represented a surcharge over and above the normal MFN or BP tariff levels. These procedures were criticized at the time, as it was argued that the existing legislation had not been intended for the use to which it had been put. The government should be in a position, however, to take quick action when this is judged necessary. Accordingly, it is proposed that there be a provision in the Customs Tariff which would give the government the specific authority to impose surcharges for balance of payments reasons. Any recourse to this provision would be governed by the 180-day limit unless Parliament gave its approval to an extension of the measures.

### **(III) Responses to Foreign Government Acts, Policies or Practices**

*Proposal 10: The government should have the power to suspend or withdraw rights or privileges granted by Canada to other countries and to impose surtaxes, quotas (or a combination thereof), or to impose countervailing duties, in cases where it is deemed to be appropriate to respond to actions by foreign governments which either affect Canadian trade in goods and services or impair Canada's rights under trade agreements.*

In the Ways and Means Motion to implement Canada's MTN tariff concessions, which was tabled in Parliament on June 2, 1980, it was proposed that Section 8 of the Customs Tariff be amended to permit the Governor in Council, (1) to impose a duty or a surtax of up to 33 1/3 per cent ad valorem where any other country imposes or increases duties or in any other manner restricts Canadian exports so that tariff or other trade concessions previously extended to Canada are impaired, (2) to restore duties to previous levels where any other country fails to meet or fulfill a condition attached to a tariff concession, (3) to interrupt, postpone or suspend implementation of any equivalent tariff or other trade concession where any other country does so to any concessions extended to Canada. The incorporation of these new provisions in the Customs Tariff will enable the government to respond effectively in cases where other countries take actions which impair Canada's access to their markets.

For additional flexibility in responding to such situations, it is also proposed that Section 4 of the Customs Tariff be amended to provide that, in withdrawing a preferential tariff rate, it would not be necessary, as at present, to increase the tariff to the General Rate. Some lower rate could be chosen if this were appropriate.

There are situations where the imposition of additional duties or the suspension of tariff or other trade concessions may not be the most appropriate response. For example, if another country limits Canada's right of access through imposition of a quota the most appropriate response may be to apply a similar quantitative restriction on imports from that country. In other cases, it may be preferable to apply a surtax only after a certain quantity of imports had been reached. For instance, a similar quantity of products from that country could be permitted entry into Canada at the MFN rate. Further imports could still be permitted but at a higher rate of duty. It is proposed, therefore, that the Governor in Council be permitted to authorize the imposition of quotas, or surtaxes on imports above a specified level. The authority for the measures would be contained in a revised Section 7 of the Customs Tariff.

The Agreement on Subsidies and Countervailing Duties has provided for a Committee of Signatories. Canada is a member of this committee. One of the functions of this committee will be to authorize a member country to take countermeasures against another signatory if the former country's rights under the agreement have been impaired by the other signatory. A country which considered, for example, that a foreign subsidy program adversely affected its exports to third markets, could request the committee to examine the matter. If the committee agreed that the country's rights had been adversely affected, that country could impose countermeasures, such as duties or quantitative restrictions on imports from the country granting the subsidy, even without a domestic injury finding. The agreement sets down explicit time limits to ensure that any complaints are promptly considered. It is proposed, therefore, that the new countervailing duties legislation contain a provision which would permit the Governor in Council, on the recommendation of the Minister of Finance, to impose countermeasures when so authorized by the Committee of Signatories under the Subsidies and Countervailing Duties Agreement.

It is proposed that any powers given to the government to permit more active enforcement of Canadian trade interests should not be restricted to trade in goods but should also cover international trade in services. While there are admittedly few internationally agreed rules governing trade in services, some countries have incorporated provisions in their trade legislation which provide some recourse, should their trade in services be adversely affected by foreign government policies or practices. It would seem appropriate, in view of the growing importance to Canada of trade in services, and of the service industries in general, to provide a similar recourse to Canadians. Under the proposed new Section 7 of the Customs Tariff the Governor in Council would have the authority to take appropriate measures to respond in situations where Canada's trade in services was affected by foreign governments' acts or policies.

There also could be cases where imported services were injuring Canadian service industries. For instance, imports into Canada of goods used in large-scale projects might be accompanied by services which were being dumped by foreign firms or subsidized by their governments. The normal provisions of the anti-dumping or countervailing duties legislation could not be used, since under the international agreements they may only apply to goods and not to services. It is difficult to anticipate how such situations could be remedied and each case would have to be assessed and dealt with according to its merits. It would be useful, in this context, if the government could have the benefit of an independent inquiry prior to taking any action which it might deem necessary to ensure fair conditions for our service industries.

There is a provision in the current Anti-dumping Act (Section 16.1) which provides that the Tribunal, on a reference by the Governor in Council, can inquire into any matter relating to the importation of goods into Canada that may be causing or threatening injury to Canadian producers of any goods. This power of inquiry is broader than that contained in the normal inquiry provisions which relate to anti-dumping cases, but it only applies to imports of goods. It would seem appropriate to expand the general inquiry authority under Section 16.1 to include inquiries into alleged injury to service industries resulting from imported services.



# ANNEX I

## Canada's Rights and Obligations under the GATT

The GATT provides a set of rules governing the use of anti-dumping duties, countervailing duties and other measures which are used in a variety of situations to provide protection to domestic producers from injurious imports.

Anti-dumping duties are used by countries to counter injury to their domestic producers arising from imports sold at prices below those in the country of export. Countervailing duties are used to offset foreign subsidies on imports which cause injury to domestic producers. These subsidies are normally taken to mean subsidies provided by foreign governments. Safeguard action provides relief from imports which, although not necessarily dumped or subsidized, may be causing or threatening serious injury to domestic producers.

### A. Anti-dumping and Subsidies and Countervailing Measures

The GATT rules have been further defined, and in some cases extended, as a result of the negotiation in the MTN of two new agreements on the application of anti-dumping duties and the use of subsidies and countervailing duties. For subsidies and countervailing duties, the new agreement represents the first attempt to build on the basic provisions of the GATT which have existed since the GATT came into force. The Anti-dumping Agreement, on the other hand, is a revision of the 1968 Anti-dumping Code, and incorporates a number of consequential amendments arising from the negotiations on subsidies and countervailing duties.

The main provisions in the new agreements relating to countervailing and anti-dumping actions are:

- a) intergovernmental consultations prior to the initiation of a countervailing duty investigation;
- b) the initiation of investigations either on the initiative of the authorities or on receipt of a complaint supported by evidence of either a subsidy practice or dumping, evidence of injury being caused and evidence of a causal link between the subsidized or dumped imports and the injury;
- c) scope for the application of provisional measures for a period generally not to exceed four months;
- d) the suspension of an investigation if a subsidizing government or an exporter undertakes to revise prices or take other measures to eliminate the subsidy or dumping and the injury therefrom;
- e) more precise criteria to be considered in establishing material injury;
- f) improved procedures for the disclosure of the basis upon which decisions are made in anti-dumping and countervailing cases; and

g) multilateral surveillance and dispute settlement procedures to ensure that the above procedures and criteria are followed.

The Subsidies and Countervailing Duties Agreement recognizes that subsidies are a legitimate tool for the promotion of national objectives, e.g., regional development, research and development, and industrial restructuring. At the same time it recognizes that such practices might have an injurious or adverse effect on the interests of other countries. The agreement introduces better international discipline in the use of subsidies which affect trade or production, including enforcement of the prohibition on the use of export subsidies on industrial products. The prohibition has been extended to cover all mineral products. It also contains provisions under which recourse can be had to the GATT by signatories who are adversely affected either by subsidized exports of other countries to third countries or in the home market of the subsidizing country. A Committee of Signatories is required to resolve disagreements within a reasonable period of time. Where the committee concludes that a subsidy causes such "adverse effects", it shall make recommendations to the parties to resolve the issues, and if these recommendations are not followed, it may authorize countermeasures. Signatories retain the right to apply unilaterally countervailing duties against subsidized imports which cause or threaten injury.

In respect of agricultural export subsidies, the agreement contains some improvements in the GATT rules by (a) providing recourse if an exporter loses ground to subsidized competition in an individual market as opposed to the world market and (b) constraining the ability of a subsidized exporter to lead market prices down through aggressive subsidization. In addition, one of the new criteria in respect of the injury test for the application of countervailing duties is whether the subsidized exports have resulted in an "increased burden on government agricultural support programs".

## **B. Emergency Import Safeguards**

Article XIX of the GATT permits governments to take emergency safeguard action in situations where imports, although not necessarily dumped or subsidized, may be causing or threatening serious injury to domestic producers of like goods. Such a situation is likely to prevail when a product is being imported in such large quantities and at prices which cause or threaten serious injury to domestic production of like goods. Unlike the imposition of anti-dumping or countervailing duties, emergency safeguard action by a government often leads to demands for compensation by the governments of the exporting countries, i.e., payment by way of compensatory duty reductions on other products of interest to those countries. If such demands, where justified, are not met, those countries are permitted to take retaliatory action by increasing rates of duty on products from the country taking the safeguard action or by other measures which affect its trade.

Agreement was not reached in the MTN on a code which would have elaborated the rules and procedures under Article XIX, although discussions are continuing. In the meantime, the existing rules of the GATT continue to apply, including the requirement that any safeguard action be taken against imports from all sources of the product concerned. Safeguard rules in the field of textiles are somewhat different in recognition of the special problems which exist in international trade in textiles. Since 1961, the GATT has sanctioned a special series of arrangements which allow a system of country-selective restrictions. The current Arrangement Regarding International Trade in Textiles (ITA), which first came into effect in 1974 and has been extended until the end of 1981, provides a framework for negotiating import levels between the consuming countries and the low-cost textile exporters.

## **ANNEX II**

### **Canada's Domestic Import Legislation**

#### **A. Anti-dumping**

The Anti-dumping Act of 1968 establishes the steps the government must take in dealing with a complaint that dumping is occurring, how dumping is to be measured, and the action to be taken to remedy any injury occurring to Canadian producers as a result of dumping.

Dumping occurs when foreign goods are sold to a Canadian importer at a price lower than the selling price for those goods in the exporter's domestic market, after taking due account of a number of different factors including the terms and conditions of sale. The government can take action only against dumping which causes or is likely to cause material injury to Canadian producers or which materially retards the establishment of production in Canada of like goods.

It is the Department of National Revenue which determines whether dumping is occurring and, if so, the extent of such dumping. It is the task of the Tribunal, an independent court of record which holds public hearings, to decide whether the dumped imports are causing injury to Canadian producers. A key feature of the present system is this separation of functions between National Revenue's administrative task of determining whether there is dumping and the Tribunal's quasi-judicial inquiry into the question of injury.

Anti-dumping duties are imposed over and above any normal customs duties. The effect of anti-dumping duties is to bring the price of the imported goods to the level at which they would be sold in the country of export. This price may be higher or lower than the price of similar Canadian goods.

#### **B. Countervailing Duties**

The basic authority for imposing countervailing duties is contained in Section 7 of the Customs Tariff. This provision, together with the Countervailing Duty Regulations, provides for the imposition of countervailing duties to offset subsidies paid by other governments on goods imported into Canada, where such goods cause injury. The regulations, introduced in 1977, were designed to parallel the anti-dumping system to the extent possible. The main difference is that the Governor in Council decides whether to impose a countervailing duty, whereas anti-dumping duties are applied following a finding of injury by the Tribunal. The amount of the countervailing duty is equal to the amount of the subsidy on the goods as determined by the Governor in Council.

#### **C. Emergency Import Safeguards**

There are two ways in which safeguard action can be taken in Canada. Under Section 8 of the Customs Tariff, the government, if it considers that goods are being imported into

Canada under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive goods, can impose a surtax on imports for a maximum of 180 days. The surtax may be extended with the consent of both Houses of Parliament.

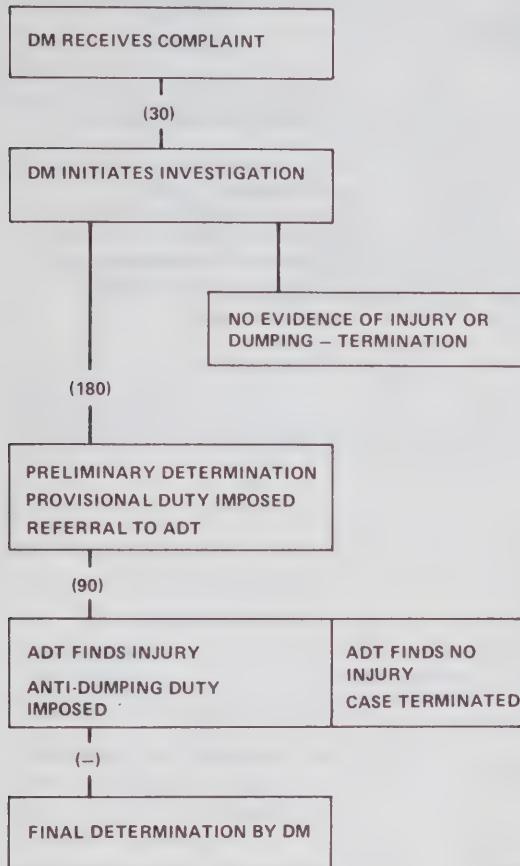
Section 5 of the Export and Import Permits Act permits the government to impose quotas on imports when an injury finding has been made by either the Textile and Clothing Board or the Anti-dumping Tribunal. In recent years Canada has imposed quotas on textiles, clothing and footwear. The Export and Import Permits Act also allows the government to place goods on the Import Control List in order to implement an intergovernmental arrangement such as a commitment to limit exports to Canada. Placing goods on the Import Control List enables the government to monitor imports which are the subject of such intergovernmental arrangements.

Surtaxes can be imposed relatively quickly and have proven to be effective in dealing with urgent situations where the problem is essentially short term and can be dealt with through the price mechanism. For longer-term problems, associated often with structural difficulties in a particular segment of Canadian industry, the government has tended to use import quotas rather than the surtax mechanism.

# ANNEX III

## SUMMARY OF PRESENT ANTI-DUMPING SYSTEM

(Numbers between boxes are maximum days permitted by Act or guidelines)



TOTAL POSSIBLE TIME AT LEAST 300 DAYS FOR FULL CASE.

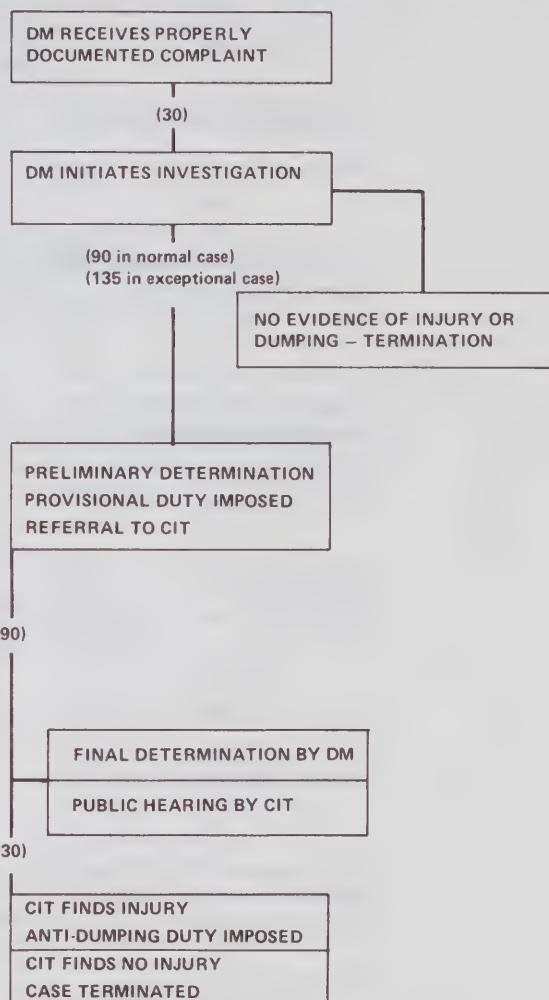
TIME FROM COMPLAINT TO PROVISIONAL DUTIES 210 DAYS.

DM – DEPUTY MINISTER

ADT – ANTI-DUMPING TRIBUNAL

## SUMMARY OF PROPOSED ANTI-DUMPING SYSTEM

(Numbers between boxes are maximum days permitted)



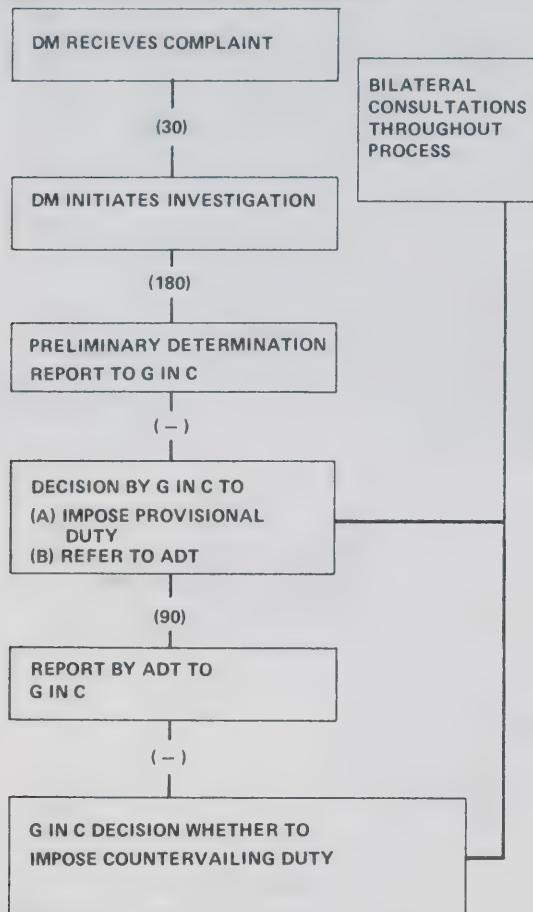
MAXIMUM TOTAL TIME 240 DAYS IN NORMAL CASES OR 285 IN EXCEPTIONAL CASES.

TIME FROM COMPLAINT TO PROVISIONAL DUTIES 120 DAYS IN NORMAL CASES OR 165 DAYS IN EXCEPTIONAL CASES.

CIT – CANADIAN IMPORT TRIBUNAL

**SUMMARY OF  
PRESENT COUNTERVAIL  
SYSTEM**

(NUMBERS BETWEEN BOXES ARE MAXIMUM DAYS  
PERMITTED BY LAW OR GUIDELINES)



TOTAL AGREEMENT TIME ELAPSE IS INDETERMINATE  
BUT UNDER GATT PROVISIONAL DUTIES CAN ONLY  
BE APPLIED FOR 120 DAYS AND THE ENTIRE INVESTI-  
GATION PERIOD SHOULD NOT EXCEED 1 YEAR.

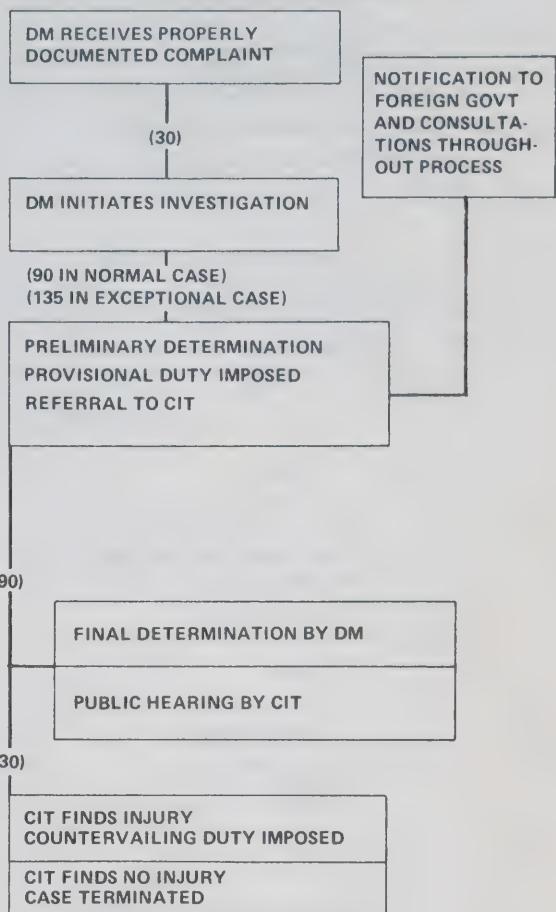
DM – DEPUTY MINISTER

G IN C – GOVERNOR IN COUNCIL

ADT – ANTI-DUMPING TRIBUNAL

**SUMMARY OF  
PROPOSED COUNTERVAIL  
SYSTEM**

(NUMBERS BETWEEN BOXES ARE MAXIMUM DAYS  
PERMITTED BY PROPOSED LEGISLATION)

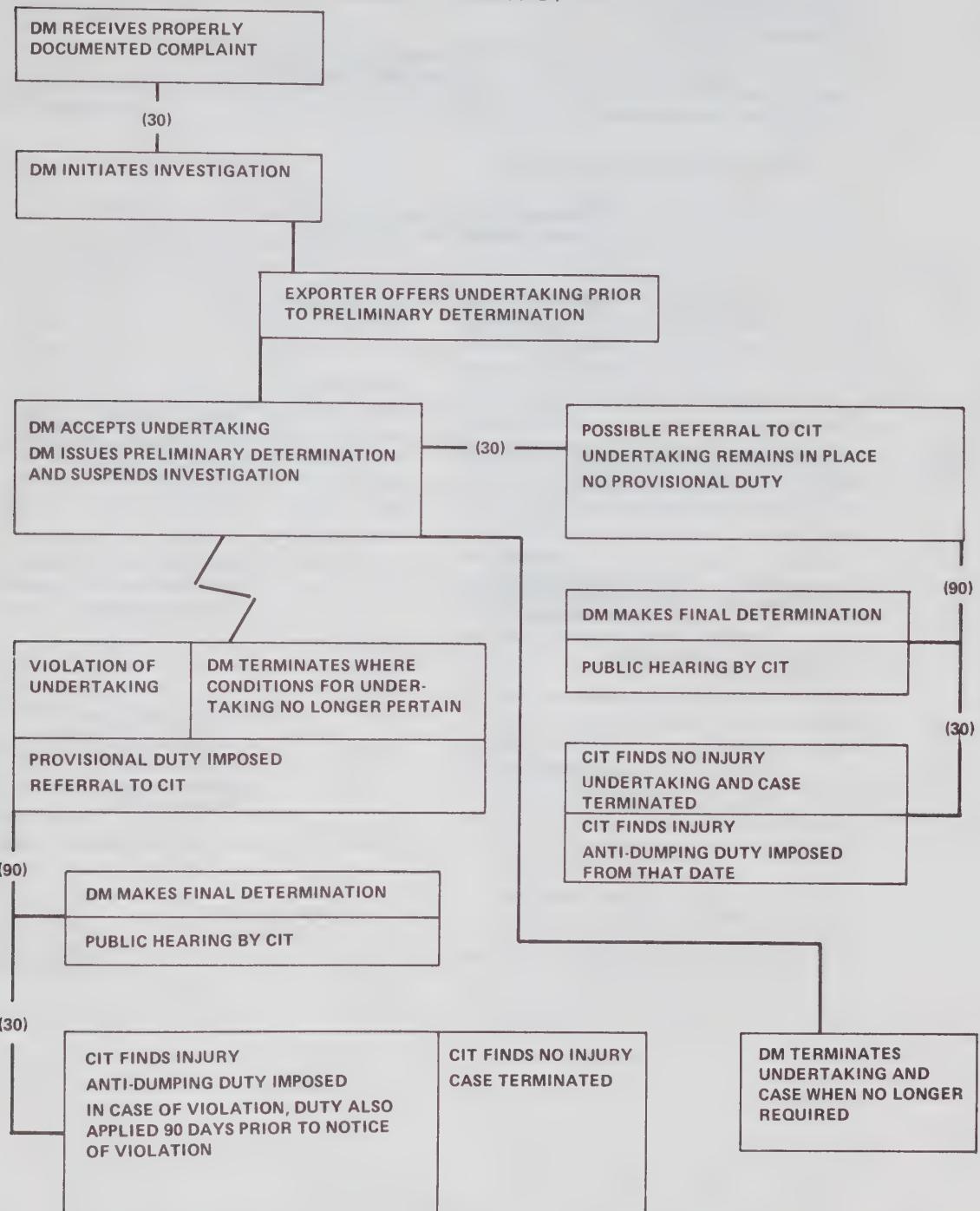


MAXIMUM TOTAL TIME 240 DAYS IN NORMAL CASE  
OR 285 DAYS IN EXCEPTIONAL CASE. TIME FROM  
COMPLAINT TO PROVISIONAL DUTY 120 DAYS IN  
NORMAL CASE OR 165 DAYS IN EXCEPTIONAL CASE.

CIT – CANADIAN IMPORT TRIBUNAL

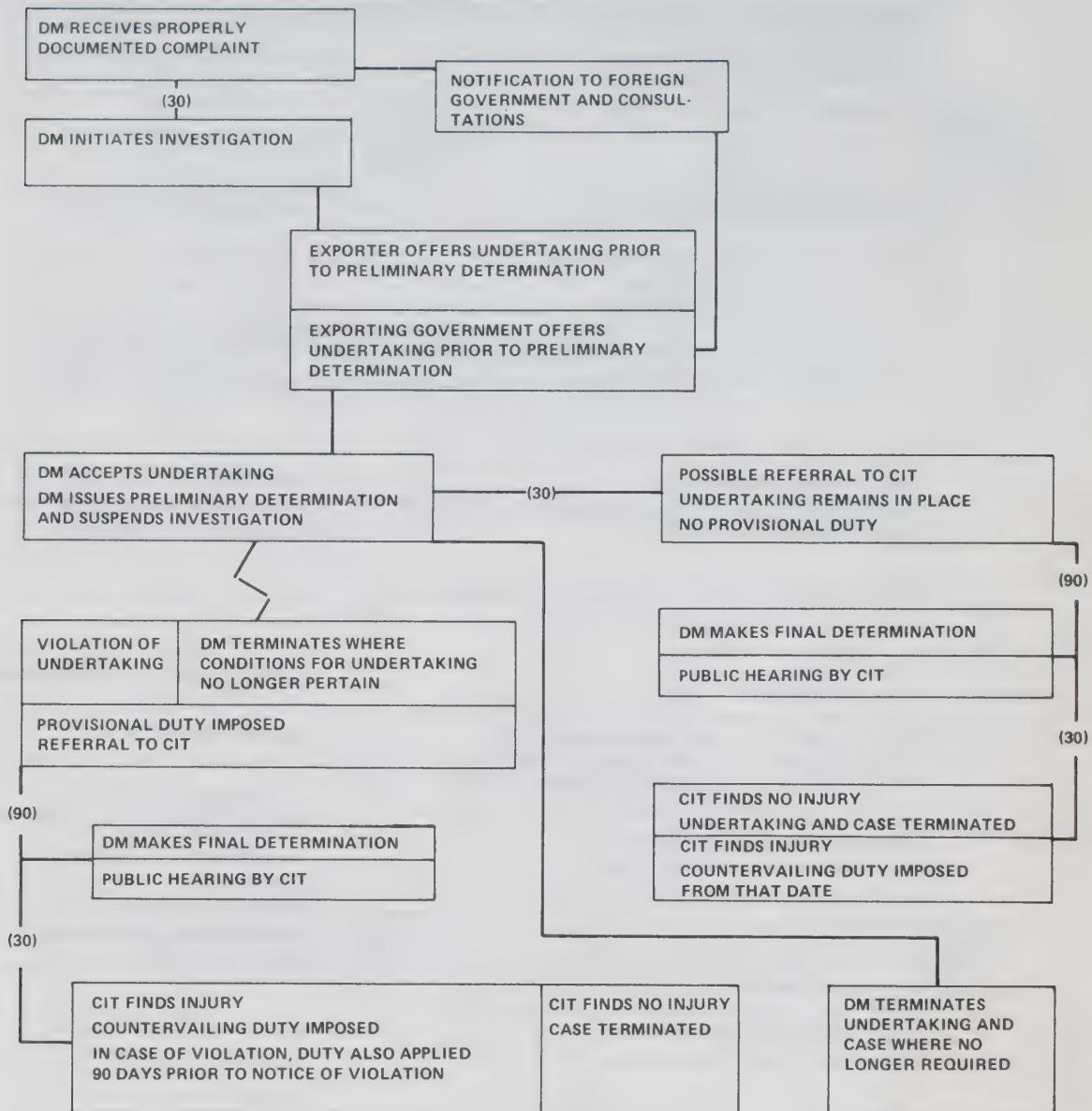
PROPOSAL FOR UNDERTAKINGS  
IN RESPECT OF DUMPING

( NUMBERS BETWEEN BOXES ARE MAXIMUM DAYS PERMITTED )



PROPOSAL FOR UNDERTAKINGS  
IN RESPECT OF SUBSIDIES

(NUMBERS BETWEEN BOXES ARE MAXIMUM DAYS PERMITTED)



# ANNEX IV

## PROPOSED NEW SPECIAL IMPORT MEASURES ACT

### SHORT TITLE

Short title

1. This Act may be cited as the *Special Import Measures Act*.

### INTERPRETATION

Definitions

“amount of the subsidy”  
“montant...”

2. (1) In this Act,

“amount of the subsidy”, in relation to any subsidized goods, means

- (a) the amount of the subsidy on the goods determined in the prescribed manner, or
- (b) where the manner of determining the amount of the subsidy has not been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of the amount of the subsidy in the prescribed manner, the amount of the subsidy on the goods determined in such manner as the Minister specifies;

“country of export”  
“pays...”

“country of export” means, in the case of dumped goods, the country in which the place from which the goods were shipped directly to Canada is located or, if the goods have not been shipped to Canada, the country in which the place from which the goods would be shipped directly to Canada under normal conditions of trade is located and, in the case of subsidized goods, the country in which the subsidy originated;

“Deputy Minister”  
“sous-ministre”

“Deputy Minister” means the Deputy Minister of National Revenue for Customs and Excise and includes any person authorized by him to perform his functions and duties under this Act;

“dumped”  
“sous-évalué”

“dumped”, in relation to any goods, means that the normal value of the goods exceeds the export price thereof;

“duty”  
“droits”

“duty” means any duty, including provisional duty, imposed by virtue of this Act;

“export price”  
“prix...”

“export price” means export price determined in accordance with sections 13 to 15;

# ANNEXE IV

## PROPOSITIONS RELATIVES À DE NOUVELLES MESURES SPÉCIALES D'IMPORTATION

### TITRE ABRÉGÉ

1. *Loi sur les mesures spéciales d'importation.*

Titre abrégé

### DÉFINITIONS ET INTERPRÉTATION

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

5 «Accord» L'Accord sur les subventions et les 5 «Accord»  
droits compensateurs, signé à Genève le 17  
décembre 1979, portant le titre d'Accord  
relatif à l'interprétation et l'application des  
articles VI, XVI et XXIII de l'Accord  
général sur les tarifs douaniers et le 10  
commerce.

«dédouaner» Le fait d'autoriser l'enlèvement  
des marchandises d'un bureau de douane,  
d'un dépôt de marchandises en souffrance  
ou d'un entrepôt, en vue de leur utilisation 15  
au Canada.

«dossier complet» Est complet tout dossier de  
plainte concernant le dumping ou le subventionnement de marchandises et:

«dossier  
complet»  
“properly...”

a) où

(i) il est allégué que les marchandises qui y sont désignées ont été ou sont sous-évaluées ou subventionnées et que leur dumping ou leur subventionnement soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible,

(ii) sont énoncés de manière suffisamment détaillée les faits sur les- 30  
quels se fondent les allégations visées au sous-alinéa (i),

(iii) sont présentées les autres observations que le plaignant estime utiles;

b) dont le plaignant fournit:

(i) les renseignements dont il dispose pour établir les faits visés au sous-alinéa a)(ii),

(ii) les autres renseignements que le Sous-ministre peut exiger.

20

35

40

«droits» Les droits, y compris les droits provisoires, imposés en application de la présente loi.

«droits»  
“duty”

“government” «gouvernement»	“government”, in relation to any country other than Canada, means the government of such country and includes any provincial, state, municipal or other local or regional government in such country and any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of such country or such provincial, state, municipal or other local or regional government;	«droits provisoires» Les droits applicables en vertu du paragraphe 9(1).	«droits provisoires» “provisional...”
“like goods” «marchandises similaires»	“like goods”, in relation to any other goods, means (a) goods that are identical in all respects to the other goods, or (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods;	15 20	“dumping» Le fait de vendre des marchandises sous-évaluées.
“margin of dumping” «marge...»	“margin of dumping”, in relation to any goods, means the amount by which the normal value of the goods exceeds the export price thereof;	25	«engagement» L’engagement écrit pris auprès du Sous-ministre et portant sur des marchandises objet d’une enquête de dumping ou de subventionnement menée par le Sous-ministre en vertu de la présente loi. L’engagement a en outre les caractéristiques suivantes:
“material injury” «préjudice...»	“material injury” means (a) in respect of the dumping or subsidizing of any goods, material injury to the production in Canada of like goods, and (b) in respect only of the subsidizing of an agricultural product, an increase in the financial burden on a federal or provincial government agricultural support program;	25 30 35	a) dans le cas de marchandises sous-évaluées, il est pris par les exportateurs, ou en leur nom, responsables de toutes ou presque toutes les exportations de ces marchandises vers le Canada et a pour objet: (i) soit d’en réviser le prix de vente conformément aux termes de l’engagement; (ii) soit d’en cesser le dumping;
“Minister” «Ministre»	“Minister” means the Minister of National Revenue;	35	b) dans le cas de marchandises subventionnées: (i) ou bien il est pris, avec le consentement du gouvernement du pays d’exportation des marchandises, par les exportateurs, ou en leur nom, responsables de toutes ou presque toutes les exportations de ces marchandises vers le Canada et a pour objet d’en réviser le prix de vente, conformément aux termes de l’engagement, (ii) ou bien il est pris par le gouvernement d’au moins un des pays responsables de toutes ou presque toutes les exportations de ces marchandises vers le Canada et a pour objet, conformément à ses termes: (A) soit d’éliminer la subvention, (B) soit de limiter le montant de la subvention,
“normal value” «valeur...»	“normal value” means normal value determined in accordance with sections 12, 14 and 15;	40	(C) soit de limiter la quantité exportée vers le Canada, (D) soit d’éliminer, par d’autres moyens, les effets qu’a le subventionnement sur la production au Canada de marchandises similaires.
“person” «personne»	“person” includes a partnership and an association;	40	«gouvernement» Le gouvernement d’un pays étranger; lui sont assimilés les gouverne-
“prescribed” .(Version anglaise seulement)	“prescribed” means, (a) in the case of a form, prescribed by the Deputy Minister, and (b) in any other case, prescribed by regulation;	45	«gouvernement» “government”

“properly documented”  
«dossier complet»

“properly documented”, in relation to a written complaint respecting the dumping or subsidizing of goods, means that

(a) the complaint

- (i) alleges that the goods have been or are being dumped or subsidized, specifies such goods and alleges that such dumping or subsidizing has caused, is causing or is likely to cause material injury or has caused or is causing retardation,
- (ii) states in reasonable detail the facts on which the allegations referred to in subparagraph (i) are based, and
- (iii) makes such other representations as the complainant deems relevant to the complaint, and

(b) the complainant provides

- (i) such information as is available to him to prove the facts referred to in subparagraph (a)(ii), and
- (ii) such other information as the Deputy Minister may reasonably require him to provide;

“provisional duty” means duty applied under subsection 9(1);

“provisional duty”  
«droits provisoires»

“release”  
«dédouaner»

“release”, in relation to any goods, means to authorize the removal of the goods from a customs office, sufferance warehouse or bonded warehouse for use in Canada;

“retardation”  
«retard...»

“retardation”, in respect of the dumping or subsidizing of any goods, means material retardation of the establishment of the production in Canada of like goods;

“sale”  
«vente»

“sale” includes leasing, renting and consignment, an agreement to sell, lease, rent or consign and an irrevocable tender;

“Secretary”  
«Secrétaire»

“Secretary” means the Secretary of the Tribunal;

“Subsidies and Countervailing Duties Agreement”  
«Accord»

“Subsidies and Countervailing Duties Agreement” means the Agreement signed at Geneva, Switzerland, on December 17, 1979 and known as the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;

“subsidized goods”  
«marchandises subventionnées»

“subsidized goods” means

ments ou administrations régionaux ou locaux de ce pays, notamment ceux d'une province, d'un État ou d'une municipalité, ainsi que les personnes et les institutions habilitées, par eux ou en vertu de leurs lois ou règlements, à agir en leur nom ou à les représenter.

«marchandises similaires» Selon le cas:

a) marchandises identiques aux marchandises en cause;

b) à défaut, marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles des marchandises en cause.

«marchandises subventionnées» Les marchandises suivantes:

a) celles qui, à un stade quelconque de leur production ou de leur commercialisation, ou lors de leur exportation ou de leur importation, ont bénéficié ou bénéficieront, directement ou indirectement, d'une subvention;

b) celles qui sont écoulées à perte par un gouvernement; en outre, celles dans la production desquelles entrent les marchandises visées à l'alinéa a) ou b).

«marge de dumping» L'excédent de la valeur normale de marchandises sur leur prix à l'exportation.

«marge de dumping»  
“margin...”

«Ministre» Le ministre du Revenu National.

«Ministre»  
“Minister”

«montant de la subvention» Le montant de la subvention octroyée à des marchandises données établi, selon le cas:

«montant de la subvention»  
“amount of...”

a) conformément aux modalités réglementaires;

b) conformément aux modalités que fixe le Ministre si les règlements ne prévoient pas de façon de l'établir ou si le Sous-ministre est d'avis qu'il est impossible de l'établir conformément aux modalités réglementaires vu l'insuffisance ou l'inaccessibilité des renseignements nécessaires.

«pays d'exportation» Dans le cas de marchandises subventionnées, le pays à l'origine des

«pays d'exportation»  
“country”

(a) goods in respect of the production, manufacture, growth, processing, purchase, distribution, sale, export or import of which a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than Canada, and

(b) goods that are disposed of at a loss by the government of a country other than Canada,

and includes any goods in which, or in the production, manufacture, growth, assembly, processing or the like of which, goods described in paragraph (a) or (b) are incorporated, consumed, used or otherwise employed;

“subsidy” includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, sale, export or import of goods in or from a country other than Canada as a result of any scheme, program, practice or thing done, provided or implemented by the government of that country, but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods have been exempted or have been or will be relieved by means of refund or drawback.

“Tribunal” means the Canadian Import Tribunal established by section ;

“undertaking” means an undertaking with respect to goods that are the subject of a dumping or subsidizing investigation under this Act given in writing to the Deputy Minister

(a) in the case of dumped goods, by or on behalf of exporters that account for all or substantially all the exports to Canada of the dumped goods

(i) to revise the sale price of the goods in the manner specified in the undertaking, or  
(ii) to cease dumping the goods in Canada, and

(b) in the case of subsidized goods,

subventions; dans le cas de marchandises sous-évaluées, le pays du lieu de leur expédition directe vers le Canada ou, à défaut d’expédition vers le Canada, le pays du lieu d’où, dans des conditions commerciales normales, elles seraient expédiées directement vers le Canada.

«personne» S’entend en outre de la société de personnes et de l’association.

“personne”  
“person”

«préjudice sensible» Selon le cas:

10 «préjudice sensible»  
“material injury”

a) le préjudice sensible causé par le dumping ou le subventionnement de marchandises à la production au Canada de marchandises similaires;

b) l’accroissement de la charge financière d’un programme fédéral ou provincial de soutien de l’agriculture entraîné par le subventionnement d’un produit agricole.

«prix à l’exportation» Le prix établi conformément aux articles 13 à 15.

20 «prix à l’exportation»  
“export...”

«retard sensible» Le retard sensible causé, par le dumping ou le subventionnement de marchandises, à la mise en production au Canada de marchandises similaires.

25 «retard sensible»  
“retardation”

«Secrétaire» Le secrétaire du Tribunal.

«Secrétaire»  
“Secretary”

30 «sous-évalué» Qualificatif de marchandises dont la valeur normale est supérieure à leur prix à l’exportation.

«sous-évalué»  
“dumped”

35 «Sous-ministre» Le sous-ministre du Revenu national pour les douanes et l’accise; lui est assimilée toute personne à qui il délègue les pouvoirs et fonctions que lui attribue la présente loi.

30 «Sous-ministre»  
“Deputy Minister”

40 «subvention» Entre autres, les avantages commerciaux, notamment financiers, qui ont été ou seront consentis, directement ou indirectement, aux personnes se livrant, à l’intérieur ou à partir d’un pays étranger, à la production ou à la commercialisation, à un stade quelconque, de marchandises données, ou à leur exportation ou importation, et consécutifs à une action quelconque menée par le gouvernement de ce pays. La présente définition exclut le monopole des droits ou des taxes internes imposés par le gouvernement du pays d’origine ou d’exportation sur des marchandises qui

“subsidy”  
“subvention”

“Tribunal”  
“Tribunal”

“undertaking”  
“engagement”

(i) by or on behalf of exporters that account for all or substantially all the exports to Canada of the subsidized goods, with the consent of the government of the country of export of the goods, to revise the sale price of the goods in the manner specified in the undertaking, or

(ii) by the government of one or more countries that account for all or substantially all the exports to Canada of the subsidized goods

(A) to eliminate the subsidy,  
(B) to limit the amount of the subsidy,

(C) to limit the quantity of the goods to be exported to Canada, or  
(D) otherwise to eliminate the effect of the subsidizing on the production in Canada of like goods,

in the manner specified in the undertaking.

(2) For the purposes of this Act, "associated persons" or persons associated with each other are persons not dealing with each other at arm's length within the meaning of subsection 251(1) of the *Income Tax Act*.

(3) The Deputy Minister, in considering any question relating to the interpretation or application of the definition "subsidized goods" or "subsidy" or the expression "export subsidy", shall take fully into account the provisions of Article 11 of, and the Annex to, the Subsidies and Countervailing Duties Agreement.

(4) Where, by its terms, any provision of this Act applies to both dumped and subsidized goods, the application of the provision

(a) to subsidized goods shall be ignored where the provision is applied in an investigation, inquiry or other proceeding or matter under this Act relating to the dumping of goods; and

(b) to dumped goods shall be ignored where the provision is applied in an investigation, inquiry or other proceeding or matter under this Act relating to the subsidizing of goods.

en ont été ou en seront exonérées, notamment par remboursement ou drawback.

5 «Tribunal» Le Tribunal canadien des importations constitué par l'article —.

5 «valeur normale» La valeur établie conformément aux articles 12, 14 et 15.

6 «vente» Sont assimilées à la vente la location, la consignation, l'engagement de vendre, de louer ou de mettre en consignation et les offres réelles.

«Tribunal»  
"Tribunal"

5 «valeur normale»  
"normal value"

6 «vente»  
"sale"

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(2) Pour l'application de la présente loi, sont liées des personnes qui ont entre elles un lien de dépendance au sens du paragraphe 251(1) de la *Loi de l'impôt sur le revenu*.

Personnes liées

(3) En interprétant et en appliquant la définition de «marchandises subventionnées» ou de «subvention» ou l'expression «subvention à l'exportation», le Sous-ministre doit tenir compte des dispositions de l'article 11 et de l'annexe de l'Accord.

15 Applicabilité des accords internationaux

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(4) L'application des dispositions de la présente loi traitant à la fois des marchandises sous-évaluées et des marchandises subventionnées est la suivante:

a) si elles s'appliquent au dumping, elles ne s'appliquent pas au subventionnement;  
b) si elles s'appliquent au subventionnement, elles ne s'appliquent pas au dumping.

Restrictions

(5) For greater certainty this Act shall be considered, for the purposes of the *Customs Act*, to be a law relating to the customs.

LIABILITY FOR ANTI-DUMPING,  
COUNTERVAILING AND PROVISIONAL  
DUTIES

3. There shall be levied, collected and paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding under section 20, before the release of the goods, that the dumping or subsidizing of goods of the same description has caused, is causing 10 or is likely to cause material injury or has caused or is causing retardation, a duty as follows:

- (a) in the case of dumped goods, an anti-dumping duty in an amount equal to the 15 margin of dumping of the imported goods; and
- (b) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the imported 20 goods.

4. There shall be levied, collected and paid on all dumped and subsidized goods imported into Canada

(a) in respect of which the Tribunal has 25 made an order or finding under section 20, after the release of the goods, that the dumping or subsidizing of goods of the same description

- (i) has caused material injury, or 30
- (ii) would have caused material injury except for the fact that provisional duty was applied or an undertaking was accepted in respect of the goods, and

(b) that were released 35

- (i) during the period described in subsection 9(1), or
- (ii) in any case where an undertaking accepted by the Deputy Minister with respect to the goods has been violated, 40 during the period commencing on the day the undertaking is violated or the ninetieth day preceding the day notice of termination of the undertaking is given pursuant to paragraph 26(1)(e), 45

(5) Pour l'application de la *Loi sur les douanes*, la présente loi est à considérer comme un texte de législation douanière.

DROITS ANTIDUMPING, DROITS  
COMPENSATEURS ET DROITS PROVISOIRES

3. Les marchandises sous-évaluées ou subventionnées importées au Canada alors que le Tribunal a établi, aux termes de l'article 20, avant leur dédouanement, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description soit cause, a causé 10 ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible sont assujetties aux droits suivants:

- a) dans le cas de marchandises sous-évaluées, à des droits antidumping d'un montant égal à la marge de dumping des marchandises;
- b) dans le cas de marchandises subventionnées, à des droits compensateurs d'un montant égal à celui de la subvention qui leur est octroyée.

4. Les marchandises sous-évaluées ou subventionnées importées au Canada:

a) d'une part, alors que le Tribunal a établi, aux termes de l'article 20, après le dédouanement des marchandises, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description:

- (i) soit a causé un préjudice sensible, 30
- (ii) soit aurait causé ce préjudice sans l'application de droits provisoires ou l'acceptation d'un engagement portant sur ces marchandises;

b) d'autre part, dont le dédouanement a 35 eu lieu:

- (i) soit au cours de la période prévue au paragraphe 9(1),
- (ii) soit au cours de la période commençant le jour où un engagement portant sur ces marchandises n'est pas honoré ou, au plus tard, le quatre-vingt-dixième jour précédent la date où avis qu'il y a été mis fin est donné conformément à l'alinéa 26(1)e), et se terminant le jour 45

whichever is later, and ending on the day that subsection 9(1) becomes applicable to the goods,

a duty as follows:

(c) in the case of dumped goods, an anti-dumping duty equal to the margin of dumping of the goods, and

(d) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the goods, but not exceeding, in the case of any goods to which subparagraph (b)(i) applies, the provisional duty, if any, payable in respect of the goods.

but not exceeding, in the case of any goods to which subparagraph (b)(i) applies, the provisional duty, if any, payable in respect of the goods.

5. There shall be levied, collected and paid on all dumped goods imported into Canada

(a) in respect of which the Tribunal has made an order or finding under section 20, after the release of the goods, that

(i) either

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury or would have caused material injury except for the application of anti-dumping measures, or  
(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that such dumping would cause material injury, and

(ii) material injury has been caused by reason of the fact that the imported goods

(A) constitute a massive importation into Canada, or  
(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,

and in order to prevent the recurrence of such material injury, it appears necessary to the Tribunal that duty be assessed on the imported goods, and

(b) that were released during the period of ninety days preceding the day on which

5. où le paragraphe 9(1) devient applicable aux marchandises,

sont assujetties aux droits suivants:

c) dans le cas de marchandises sous-évaluées, des droits anti-dumping d'un montant égal à la marge de dumping des marchandises;

d) dans le cas de marchandises subventionnées, des droits compensateurs d'un montant égal à celui de la subvention octroyée aux marchandises.

Le montant de ces droits ne doit cependant pas dépasser, pour les marchandises visées au sous-alinéa b(i), celui des droits provisoires, s'il en est.

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5. Les marchandises sous-évaluées importées au Canada sont assujetties à des droits antidumping d'un montant égal à la marge de dumping des marchandises si les conditions suivantes sont réunies:

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a) le Tribunal a établi, aux termes de l'article 20, après le dédouanement des marchandises, par ordonnance ou dans ses conclusions, que:

(i) d'une part:

(A) ou bien a eu lieu une importation considérable de marchandises similaires dont le dumping a causé un préjudice sensible ou en aurait causé sans l'application de mesures antidumping, 30  
(B) ou bien l'importateur de ces marchandises était ou aurait dû être au courant du dumping que pratiquait l'exportateur et du fait que ce dumping causerait un préjudice sensible, 35

(ii) d'autre part, un préjudice sensible a été causé du fait que les marchandises importées:

(A) soit représentent une importation massive, 40  
(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

et le Tribunal estime nécessaire que soient imposés des droits antidumping sur les marchandises importées afin de prévenir la réapparition du préjudice;

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the Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of that description, an anti-dumping duty in an amount equal to the margin of dumping of the imported goods.

6. Where a subsidy on subsidized goods is an export subsidy, there shall be levied, collected and paid on all such subsidized goods imported into Canada

(a) in respect of which the Tribunal has made an order or finding under section 20, after the release of the goods, that

(i) material injury has been caused by reason of the fact that the imported goods

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time, and

(ii) a countervailing duty should be imposed retroactively on such subsidized goods in order to prevent the recurrence of such material injury, and

(b) that were released during the period of ninety days preceding the day on which the Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of that description,

a countervailing duty in an amount equal to such of the amount of the subsidy on the imported goods as is an export subsidy.

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6. Les marchandises subventionnées qui font l'objet d'une subvention à l'exportation et qui sont importées au Canada sont assujetties à des droits compensateurs d'un montant égal à celui de la subvention à l'exportation qui leur est octroyée si les conditions suivantes sont réunies:

a) le Tribunal a établi, aux termes de l'article 20, après le dédouanement des marchandises, par ordonnance ou dans ses conclusions, que:

(i) d'une part, un préjudice sensible a été causé du fait que les marchandises importées:

(A) soit représentent une importation massive,

(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

(ii) d'autre part, des droits compensateurs devraient être imposés à titre rétroactif sur ces marchandises subventionnées afin de prévenir la réapparition du préjudice;

b) le dédouanement des marchandises a eu lieu au cours de la période de quatre-vingt-dix jours précédent la date à laquelle le Sous-ministre a rendu une décision provisoire de subventionnement à leur sujet ou à celui de marchandises de même description.

7. Les marchandises dédouanées pendant que leur est applicable un décret pris en vertu de l'article 28 sont assujetties à des droits antidumping d'un montant égal à celui de la différence entre leur prix de base, établi par le Sous-ministre conformément à l'article 28, et leur prix à l'exportation.

7. There shall be levied, collected and paid on all goods

(a) to which an order made by the Governor in Council under section 28 applies, and

(b) that were released while the order was in effect in respect of them,

an anti-dumping duty in an amount equal to the amount by which the basic price of the goods, as determined under section 28 by the

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Deputy Minister, exceeds the export price thereof.

Governor in Council may impose countervailing duty by order

8. Where the Committee of Signatories established pursuant to Article 16 of the Subsidies and Countervailing Duties Agreement authorizes Canada to impose countervailing duties on subsidized goods the growth, produce or manufacture of any country specified by the Committee, the Governor in Council may, on the recommendation of the Minister of Finance, by order impose in respect of any such subsidized goods a countervailing duty in an amount not greater than the amount of the subsidy on the goods and where a countervailing duty is so imposed in respect of any subsidized goods, there shall be levied, collected and paid on all such goods imported into Canada a countervailing duty in the amount specified in the order in respect of the goods. 15 20

Application of provisional duty

9. (1) Subject to section 24, where the Deputy Minister makes a preliminary determination of dumping or subsidizing in an investigation under this Act, the importer of goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day the preliminary determination is made and ending on the earliest of

(a) the day on which the Deputy Minister causes the investigation to be terminated pursuant to subsection 18(1) with respect to goods of that description, 35  
 (b) the day on which the Tribunal makes an order or finding under section 20 with respect to goods of that description, and  
 (c) the last day of the period of one hundred and twenty days commencing on the day on which the preliminary determination is made, 40

shall

(d) pay or cause to be paid, on demand of the Deputy Minister, provisional duty in an amount not greater than the estimated margin of dumping of or the estimated amount of the subsidy on the said goods; 45 or

8. Le gouverneur en conseil peut, par décret subordonné à la recommandation du ministre des Finances, assujettir à des droits compensateurs, d'un montant ne dépassant pas celui de la subvention qui leur est octroyée, des marchandises subventionnées, désignées par le comité des signataires cons-titué aux termes de l'article 16 de l'Accord, qui sont importées après avoir été produites dans des pays ainsi désignés et au sujet des-10 quelles le comité a autorisé le Canada à prendre cette mesure. 5 10

Droits compensateurs imposés par décret

9. (1) Sous réserve de l'article 24, lorsque des marchandises de même description que celles faisant l'objet d'une décision provisoire 15 de dumping ou de subventionnement prévue par la présente loi sont dédouanées au cours de la période commençant à la date de cette décision et se terminant à la première des dates suivantes:

30 a) le jour où le Sous-ministre fait clore, conformément au paragraphe 18(1), l'enquête sur les marchandises objet de la décision provisoire,  
 b) le jour où le Tribunal rend l'ordonnance ou prend les conclusions prévues à l'article 20 au sujet des marchandises objet de la décision définitive de dumping ou de subventionnement,  
 c) le cent-vingtième jour à compter du jour où est rendue la décision provisoire, il appartient à l'importateur de ces marchandises, selon le cas:  
 d) de veiller à l'acquittement, sur demande du Sous-ministre, des droits provisoires d'un montant ne dépassant pas la marge estimative de dumping ou le montant estimatif de la subvention octroyée à ces marchandises;  
 e) de veiller à ce que soit fournie, sur demande du Sous-ministre et en la forme

Droits provisoires

(e) post or cause to be posted, on demand of the Deputy Minister, security in a prescribed form and in an amount or to a value not greater than the estimated margin of dumping of or the estimated amount of the subsidy on the said goods.

(2) Any provisional duty paid or security posted pursuant to subsection (1) by or on behalf of an importer in respect of the importation of dumped or subsidized goods of any description shall

(a) be returned to the importer forthwith after

(i) the Deputy Minister causes the investigation to be terminated pursuant to subsection 18(1) with respect to goods of that description,

(ii) all proceedings respecting the dumping or subsidizing of goods of that description are terminated as described in subsection 20(8), or

(iii) the Tribunal makes an order or finding under section 20 with respect to goods of that description if the order or finding is only to the effect that the dumping or subsidizing of such goods is likely to cause material injury; and

(b) except to the extent of the duty payable in respect of the imported goods, be returned to the importer forthwith after a determination is made by a Dominion customs appraiser pursuant to paragraphs 29(c) and (d) in respect of the imported goods.

**10.** (1) The importer of any goods in respect of which duty is payable by virtue of this Act shall, on demand of the Deputy Minister, pay or cause to be paid all duties imposed by virtue of this Act on the goods imported into Canada.

(2) Subject to subsection (4), the Minister shall grant to any importer or owner of goods by or on behalf of whom has been paid, as duty in respect of the goods, an amount that the Minister is satisfied was not properly payable, a refund of such amount.

(3) Where, as a consequence of an order or finding of the Tribunal under section 20,

que celui-ci prescrit, une caution ne dépassant pas la marge estimative de dumping ou le montant estimatif de la subvention octroyée à ces marchandises.

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(2) Les droits provisoires et les cautions prévus au paragraphe (1) pour des marchandises d'une certaine description sont, selon le cas:

a) restitués à l'importateur dès que, selon le cas:

(i) le Sous-ministre fait clore, conformément au paragraphe 18(1), l'enquête sur les marchandises répondant à cette description,

(ii) les procédures relatives au dumping ou au subventionnement des marchandises répondant à cette description sont closes conformément au paragraphe 20(8),

(iii) le Tribunal rend, au sujet des marchandises répondant à cette description, une ordonnance aux termes de l'article 20 ou prend des conclusions à leur sujet en vertu de cet article, à l'effet que le dumping ou le subventionnement des marchandises n'est que susceptible de causer un préjudice sensible;

b) restitués à l'importateur, jusqu'à concurrence des droits payables sur les marchandises en cause, dès que l'appréciateur fédéral des douanes rend une décision sur ces marchandises conformément aux alinéas 29c) et d).

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**10.** (1) Les importateurs des marchandises que la présente loi assujettit à des droits en raison de leur importation au Canada doivent, sur demande du Sous-ministre, veiller à l'acquittement de ces droits.

Obligation des importateurs

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(2) Sous réserve du paragraphe (4), le Ministre rembourse aux importateurs ou aux propriétaires de marchandises tout montant qu'il estime superflu dans les droits qu'ils ont payés ou qui ont été payés en leur nom sur les marchandises.

Remboursement des droits

(3) Si un importateur ou un propriétaire acquitte des droits sur ces

an importer or owner of goods pays an amount as duty in respect of the goods and the order or finding is set aside by judgment of a court of competent jurisdiction, the Minister shall, unless the judgment of the court is itself set aside on appeal, grant to the importer or owner a refund of such amount.

Idem

(4) No refund shall be granted pursuant to subsection (2) because of an incorrect determination of any matter referred to in paragraphs 30(1)(a) to (c), other than an incorrect determination resulting from a clerical or arithmetical error.

Exemption by regulation

**11.** The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act.

Determination of normal value of goods

**12.** (1) Subject to subsections (6) and (7), where goods are sold to an importer in Canada, the normal value of such goods is the price of like goods when they are sold by the exporter of the first mentioned goods

(a) to purchasers

(i) with whom, at the time of the sale of the like goods, the exporter is not associated, and

(ii) who are at the same or substantially the same trade level as the importer,

(b) in the same or substantially the same quantities as the sale of goods to the importer,

(c) in the ordinary course of trade for home consumption under competitive conditions,

(d) during the period of sixty days preceding the date of the sale of the goods to the importer or, where, in the opinion of the Deputy Minister, the nature of the trade in those goods requires that sales of like goods by the exporter during a period other than such period of sixty days be taken into account, during such other period immediately preceding the date of the sale of the goods to the importer as the Deputy Minister specifies for those goods

5 marchandises aux termes d'une ordonnance ou de conclusions qui sont prévues à l'article 20 et qui sont ensuite annulées par une cour compétente, le Ministre doit lui rembourser le montant des droits versés sauf si le jugement de cette cour est à son tour annulé en appel.

(4) Une décision incorrecte rendue en vertu du paragraphe 30(1) ne donne pas 10 droit au remboursement prévu au paragraphe (2) sauf si cette décision découle d'une erreur de calcul ou d'écriture.

Restriction

**11.** Sur la recommandation du ministre des Finances, le gouverneur en conseil peut, par règlement, soustraire des marchandises ou des catégories de marchandises à l'application de la présente loi.

Exonérations réglementaires

#### NORMAL VALUE AND EXPORT PRICE

#### VALEUR NORMALE ET PRIX À L'EXPORTATION

**12.** (1) La valeur normale des marchandises vendues à un importateur se trouvant au Canada est, sous réserve des paragraphes (6) 20 et (7), le prix, corrigé conformément au présent paragraphe, auquel des marchandises similaires sont vendues, par l'exportateur des marchandises mentionnées en premier lieu:

a) à des acheteurs

(i) avec lesquels il n'est pas lié au moment de la vente des marchandises similaires,

(ii) qui se situent au même niveau ou presque du circuit de distribution que l'importateur;

b) en quantités égales ou sensiblement égales aux quantités vendues à l'importateur;

c) dans le cours ordinaire des affaires pour consommation intérieure en situation de concurrence;

d) pendant les soixante jours précédent la date de la vente à l'importateur ou pendant toute autre période précédant cette date que le Sous-ministre rend applicable à ces marchandises ou à des marchandises de la même catégorie, s'il est d'avis que, vu la nature du commerce de ces marchandises, il est nécessaire de tenir compte des

Valeur normale des marchandises

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or for goods of the class to which those goods belong, and

(e) at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade,

adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.

5 ventes de marchandises similaires effectuées par l'exportateur pendant une autre période;

e) au lieu d'où les marchandises ont été directement expédiées au Canada ou, à défaut d'expédition au Canada, au lieu d'où, dans des conditions commerciales normales, les marchandises seraient expédiées directement au Canada.

10 La correction nécessaire à l'application du présent paragraphe, réalisée selon les modalités et dans les circonstances prévues par règlement, a pour objet de traduire, en ce qui a trait à la comparaison entre le prix des marchandises vendues à l'importateur et le 15 prix des marchandises similaires vendues par l'exportateur, les différences existant notamment en matière de conditions de vente et de taxation.

(2) In the application of subsection (1) in 15 the case of any goods,

(a) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter at the place described in paragraph (1)(e) as to 20 permit a proper comparison with the sale of the goods to the importer in Canada, there shall be substituted for that place the place located nearest thereto at which like goods were sold by the exporter; 25

(b) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter to purchasers described in subparagraph (1)(a)(i) who are at the same or substantially the same trade level as the importer in Canada as to permit a proper comparison with the sale of goods to the importer, but there was such a number of sales of like goods made to purchasers described in 30 subparagraph (1)(a)(i) who are at the trade level nearest and subsequent to that of the importer, there shall be substituted for the purchasers described in paragraph (1)(a) purchasers described in subparagraph (1)(a)(i) who are at the trade level nearest and subsequent to that of the importer; 35

(c) if by reason of the fact that

(2) Pour l'application du paragraphe (1): 20 *Idem*

a) le lieu le plus proche de celui désigné à l'alinéa (1)e) et où l'exportateur a effectué des ventes de marchandises similaires doit être préféré à celui désigné à cet alinéa si le Sous-ministre est d'avis que l'exportateur n'a pas effectué, au lieu désigné à l'alinéa (1)e), un nombre de ventes de marchandises similaires permettant une comparaison utile avec les ventes des marchandises à l'importateur se trouvant au 30 Canada;

b) les acheteurs visés au sous-alinéa (1)a)(i) et qui sont situés au niveau suivant du circuit de distribution le plus proche de celui de l'importateur doivent être préférés, pour permettre une comparaison utile avec la vente de marchandises à l'importateur, aux acheteurs visés à l'alinéa (1)a) si le Sous-ministre est d'avis que le nombre de ventes de marchandises similaires par l'exportateur aux acheteurs visés au sous-alinéa (1)a)(i) et qui sont situés au même niveau ou presque du circuit de distribution que l'importateur se trouvant au Canada ne permet pas une comparaison utile;

c) l'exportateur est réputé être tout autre vendeur que le Sous-ministre peut désigner parmi ceux qui ont effectué des ventes de

- (i) the sales of like goods made by the exporter were solely or primarily for export, or
- (ii) the sales of like goods made by the exporter during the period referred to in paragraph (1)(d) were solely or primarily to purchasers associated with each other during that period,

there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter as to permit a proper comparison with the sale of the goods to the importer in Canada, but there were sales of like goods for home consumption in the country of export by other vendors, such one or more of any such vendors as the Deputy Minister may specify shall be deemed to be the exporter;

(d) if the quantity of goods sold by the exporter to the importer in Canada is larger than the largest quantity of like goods sold by the exporter for home consumption, the sales of like goods shall be those sales of like goods that are in the largest quantity sold by the exporter for home consumption; and

(e) if the quantity of goods sold by the exporter to the importer in Canada is smaller than the smallest quantity of like goods sold by the exporter for home consumption, the sales of like goods shall be those sales of like goods that are in the smallest quantity sold by the exporter for home consumption.

(3) In determining the normal value of any goods under subsection (1), there shall not be taken into account

(a) any sale of like goods for home consumption by a vendor to a purchaser if the vendor did not, at the same or substantially the same time, sell like goods in the ordinary course of trade to other persons in the country of export at the same trade level as, and not associated with, the purchaser; and

(b) any sale of like goods that, in the opinion of the Deputy Minister, forms part of a series of sales of goods at prices that do not provide for recovery in the normal

5 marchandises similaires pour consommation intérieure dans le pays d'exportation si le Sous-ministre est d'avis que l'exportateur n'a pas effectué un nombre de ventes de marchandises similaires permettant une comparaison utile avec les ventes des marchandises à l'importateur se trouvant au Canada parce qu'elles ont été faites, selon le cas:

- (i) uniquement ou essentiellement pour 10 exportation,
- (ii) uniquement ou essentiellement à des acheteurs qui étaient liés entre eux au cours de la période visée à lalinéa (1)d);

15 d) les ventes de marchandises similaires sont celles où les marchandises similaires sont en quantité la plus grande et que l'exportateur a effectuées pour consommation intérieure si la quantité de marchandises que l'exportateur a vendue à l'importateur se trouvant au Canada est plus grande que la plus grande quantité de marchandises similaires qu'il ait vendue pour consommation intérieure;

20 e) les ventes de marchandises similaires sont celles où les marchandises similaires sont en quantité la moins grande et que l'exportateur a effectuées pour consommation intérieure si la quantité de marchandises que l'exportateur a vendue à l'importateur se trouvant au Canada est plus petite que la plus petite quantité de marchandises similaires qu'il ait vendue pour consommation intérieure.

35

(3) Dans le calcul de la valeur normale de marchandises visée au paragraphe (1), il n'est pas tenu compte des ventes de marchandises similaires qui suivent:

40 a) celles effectuées pour consommation intérieure par un vendeur qui, au même moment ou à peu près, ne vendait pas, dans le cours ordinaire des affaires et dans le pays d'exportation, des marchandises similaires à des personnes autres que l'acheteur et non liées à lui mais situées au même niveau du circuit de distribution que lui;

45 b) celles qui, de l'avis du Sous-ministre, s'inscrivent dans une série de ventes effec-

35 Idem

Idem

course of trade and within a reasonable period of time of the cost of production of the goods and the administration and selling costs with respect to the goods and for an amount for profit.

Price of like goods

(4) In determining the normal value of any goods under subsection (1), the price of like goods when sold by the exporter to purchasers during the period referred to in paragraph (1)(d) is

(a) the price at which the preponderance of sales of like goods that comply with all the terms and conditions referred to in subsection (1) or that are applicable by virtue of subsection (2) was made by the exporter to purchasers throughout the period; and

(b) when there is no such preponderance of sales at a single price throughout the period, the weighted average of the prices at which like goods are so sold by the exporter to purchasers throughout the period.

Idem

(5) Where goods imported into Canada and goods sold for home consumption are like goods except only that the goods sold for home consumption have applied to them a trade mark, as defined in the *Trade Marks Act*, that is not applied to the goods imported into Canada, and goods like the goods imported are not sold for home consumption, the goods imported and the goods sold for home consumption shall be deemed to be like goods for the purposes of this section if, in the opinion of the Deputy Minister,

(a) the goods are being imported into Canada without that trade mark applied to them in order to avoid the operation of subsection (1); and

(b) it is probable that there will be applied to the goods, subsequent to their importation into Canada, that trade mark or any other mark so closely resembling that trade mark that it is likely to be taken therefor.

Where normal value cannot be determined under subsection (1)

(6) Subject to subsection (7), where the normal value of any goods cannot be determined under subsection (1) by reason that there was not, in the opinion of the Deputy

tuées à des prix ne permettant pas, dans un délai raisonnable et dans le cours ordinaire des affaires, le recouvrement du coût de production des marchandises, des frais administratifs et des frais de vente ni la 5 réalisation d'un bénéfice.

(4) Pour le calcul de la valeur normale visée au paragraphe (1), le prix des marchandises similaires que l'exportateur vend au cours de la période mentionnée à l'alinéa 10 10 (1)d) est, selon le cas:

a) le prix auquel a été effectué le plus grand nombre de ventes remplissant les conditions énumérées au paragraphe (1) ou applicables en vertu du paragraphe (2); 15  
b) la moyenne pondérée des prix de vente, s'il n'y a pas eu un nombre assez grand de ventes à un prix unique.

Prix des marchandises similaires

(5) Pour l'application du présent article, 25 les marchandises importées et les marchandises vendues pour consommation intérieure 20 sont réputées des marchandises similaires, bien que seules les marchandises destinées à la consommation intérieure aient une marque de commerce au sens de la *Loi sur les marques de commerce* et que des marchandises similaires à celles importées ne soient pas vendues pour consommation intérieure, si le Sous-ministre est d'avis que:

a) d'une part, les marchandises sont 30 importées sans marque de commerce afin d'être soustraites à l'application du paragraphe (1);

b) d'autre part, après leur importation, les marchandises porteront, en toute probabilité, cette marque de commerce ou une autre susceptible d'être confondue avec elle.

Marchandises réputées similaires

(6) La valeur normale visée au paragraphe (1) qui ne peut être établie parce que le 40 nombre de ventes de marchandises similaires remplissant les conditions énumérées au

Autre moyen de calculer la valeur normale

Minister, such a number of sales of like goods that comply with all the terms and conditions referred to in that subsection or that are applicable by virtue of subsection (2) as to permit a proper comparison with the sale of the goods to the importer, the normal value of the goods shall be determined, at the option of the Deputy Minister in any case or class of cases, as

(a) such price of like goods when sold by 10 the exporter to importers in any country other than Canada during the period referred to in paragraph (1)(d) as, in the opinion of the Deputy Minister, fairly reflects the market value of the goods at 15 the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by the exporter to importers in any country other than Canada; or

25

(b) the aggregate of

- (i) the cost of production of the goods, and
- (ii) an amount for administrative, selling and all other costs and for profits, 30 such cost and amount to be determined in the prescribed manner.

(7) Where goods are shipped directly to Canada from a country where, in the opinion of the Deputy Minister,

(a) the government of that country has a monopoly or substantial monopoly of its export trade, and

(b) domestic prices are substantially determined by the government of that 40 country,

the normal value of the goods is

(c) where like goods are sold by producers for home consumption in any country other than Canada designated by the 45 Deputy Minister,

paragraphe (1) ou applicables en vertu du paragraphe (2) ne permet pas, de l'avis du Sous-ministre, une comparaison utile avec la vente des marchandises à l'importateur se trouvant au Canada, est, au choix du Sous-ministre, dans chaque cas ou série de cas, l'un des montants suivants, sous réserve du paragraphe (7):

a) le prix de vente, d'une part, auquel des marchandises similaires sont vendues, au 10 cours de la période visée à l'alinéa (1)d), par l'exportateur à des importateurs se trouvant dans des pays étrangers et, d'autre part, qui, de l'avis du Sous-ministre, traduit la valeur marchande de ces marchandises au moment de leur vente à l'importateur se trouvant au Canada, ce prix étant corrigé, selon les modalités et dans les circonstances prévues par règlement, dans le but de traduire, en ce qui a trait à 20 la comparaison entre le prix des marchandises vendues à l'importateur se trouvant au Canada et le prix des marchandises similaires vendues par l'exportateur à des importateurs se trouvant dans des pays 25 étrangers, les différences existant notamment en matière de conditions de vente et de taxation;

b) la somme des montants suivants établis de façon réglementaire: 30

(i) le coût de production des marchandises,

(ii) un montant pour les frais, notamment les frais administratifs et les frais de vente, et pour les bénéfices. 35

(7) Si des marchandises sont expédiées directement au Canada d'un pays dont, de 35 l'avis du Sous-ministre, le gouvernement, à la fois:

a) exerce un monopole ou un quasi-monopole sur son commerce à l'exportation,

b) fixe, en majeure partie, les prix intérieurs,

l'un des montants suivants représente la valeur normale de ces marchandises: 45

c) au choix du Sous-ministre dans chaque cas ou série de cas, si des marchandises similaires sont vendues par des producteurs pour la consommation intérieure

(i) the price of such like goods, as adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by producers for home consumption in the country other than Canada designated by the Deputy Minister, or

(ii) the aggregate of

- (A) the cost of production of such like goods, and
- (B) an amount for administrative, selling and all other costs and for profits,

such cost and amount to be determined in the prescribed manner,

whichever of such price and aggregate the Deputy Minister designates for any case or class of cases; or

(d) where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided in paragraph (c),

(i) the price of like goods produced in Canada and sold for home consumption in Canada at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold for home consumption in Canada, or

(ii) the aggregate of

- (A) the cost of production of like goods produced in Canada and sold for home consumption in Canada, and
- (B) an amount for administrative, selling and all other costs and for profits,

such cost and amount to be determined in the prescribed manner,

whichever of such price and aggregate the Deputy Minister designates for any case or class of cases.

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dans un pays étranger désigné par le Sous-ministre:

(i) soit le prix de ces marchandises corrigé, selon les modalités et dans les circonstances prévues par règlement, dans le but de traduire, en ce qui a trait à la comparaison entre le prix des marchandises vendues à l'importateur se trouvant au Canada et le prix des marchandises similaires vendues par des producteurs pour la consommation intérieure dans le pays étranger désigné par le Sous-ministre, les différences existant notamment en matière de conditions de vente et de taxation,

15

(ii) soit la somme des montants suivants établis de façon réglementaire:

- (A) le coût de production de ces marchandises,
- (B) un montant pour les frais, notamment les frais administratifs et les frais de vente, et pour les bénéfices;

d) au choix du Sous-ministre dans chaque cas ou série de cas, si le Sous-ministre est d'avis qu'il est impossible d'établir la valeur normale des marchandises en vertu de l'alinéa c) vu l'insuffisance ou l'inaccessibilité des renseignements nécessaires:

(i) soit le prix de marchandises similaires produites au Canada et vendues pour consommation intérieure au Canada au moment de la vente des marchandises à l'importateur se trouvant au Canada, corrigé, selon les modalités et dans les circonstances prévues par règlement, dans le but de traduire, en ce qui a trait à la comparaison entre le prix des marchandises vendues à l'importateur et le prix des marchandises vendues pour consommation intérieure au Canada, les différences existant notamment en matière de conditions de vente et de taxation,

(ii) soit la somme des montants suivants établis de façon réglementaire:

45

- (A) le coût de production des marchandises similaires produites au Canada et vendues pour consommation intérieure au Canada;

**13. (1)** Subject to this section, the export price of any goods sold to an importer in Canada, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of

(a) the exporter's sale price for the goods, adjusted by deducting therefrom

(i) the costs, charges and expenses incurred in preparing the imported goods for shipment to Canada that are 10 additional to those costs, charges and expenses generally incurred on sales for home consumption,

(ii) duties imposed by virtue of this Act or the *Customs Tariff* and taxes, if applicable, for the account of or paid by any person other than the importer,

(iii) all other costs, charges and expenses resulting from the exportation of the imported goods, or arising after 20 their shipment, from the place described in paragraph 12(1)(e) or the place substituted therefor by virtue of paragraph 12(2)(a), and

(iv) where credit terms granted to the 25 importer with respect to the sale of the goods are more favourable than credit terms granted by the exporter to purchasers with respect to the sale of like goods for home consumption, an amount 30 determined in the prescribed manner to reflect the value to the importer of the more favourable credit terms; and

(b) the price at which the importer has purchased or agreed to purchase the 35 goods, adjusted by deducting therefrom all costs, charges, expenses, duties, taxes and amounts described in subparagraphs (a)(i) to (iii).

(2) Subject to subsection (3), where, in 40 respect of any imported goods,

(a) there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or

(B) un montant pour les frais, notamment les frais administratifs et les frais de vente, et pour les bénéfices.

**13. (1)** Le prix à l'exportation de marchandises vendues à un importateur se trouvant au Canada est, malgré toute facture ou déclaration sous serment incompatible mais 5 sous réserve du présent article, égal au moins-  
deux montants suivants:

a) le prix auquel l'exportateur a vendu les 10 marchandises, corrigé par déduction des montants suivants:

(i) les frais entraînés par la préparation des marchandises importées en vue de leur expédition vers le Canada et venant 15 en sus de ceux habituellement entraînés par des ventes pour consommation intérieure,

(ii) le cas échéant, les droits prévus par la présente loi ou le Tarif des douanes et 20 les taxes, payés par toute personne autre que l'importateur ou payés au nom de celui-ci,

(iii) tous les autres frais découlant de l'exportation des marchandises importées ou consécutifs à leur expédition, depuis le lieu désigné à l'alinéa 12(1)e) ou le lieu qui lui a été substitué en vertu de l'alinéa 12(2)a),

(iv) le montant, établi de la façon réglementaire, qui correspond à ce que représentent, pour l'importateur, les facilités de paiement qui lui ont été consenties et qui sont afférentes à la vente des marchandises, si ces facilités sont plus avantageuses que celles consenties par l'exportateur à des acheteurs pour des marchandises similaires destinées à la consommation intérieure;

b) le prix auquel l'importateur a acheté ou 40 s'est engagé à acheter les marchandises, corrigé par déduction des montants visés aux sous-alinéas a)(i), (ii) et (iii).

(2) Sous réserve du paragraphe (3), si, 45 Idem selon le cas:

a) il n'y a pas de prix auquel l'exportateur a vendu des marchandises ou de prix auquel l'importateur se trouvant au

(b) the Deputy Minister is of the opinion that the export price, as determined under subsection (1), is unreliable

- (i) by reason that the sale of the goods for export to Canada was a sale between 5 associated persons, or
- (ii) by reason of a compensatory arrangement, made between any two or more of the following, namely, the manufacturer, producer, vendor, export- 10 er, importer in Canada and any other person, that directly or indirectly affects or relates to

- (A) the price of the goods,
- (B) the sale of the goods, 15
- (C) the net return to the exporter, vendor, manufacturer or producer of the goods, or
- (D) the net cost to the importer of the goods, 20

the export price of the imported goods is

(c) if the goods were sold by the importer in the condition in which they were imported to a person with whom, at the time of the sale, he was not associated, the 25 price for which the goods were so sold less an amount equal to the aggregate of

- (i) all costs, including duties imposed under this Act or the *Customs Tariff* and taxes, incurred on or after the 30 importation of the goods and on or before their sale by the importer,
- (ii) an amount for profit determined in the prescribed manner,
- (iii) the costs, charges and expenses 35 incurred by the exporter, importer or any other person in preparing the imported goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred 40 on sales for home consumption,
- (iv) all other costs, charges and expenses incurred by the exporter, importer or any other person resulting from the exportation of the imported 45 goods, or arising after their shipment, from the place described in paragraph 12(1)(e) or the place substituted therefor by virtue of paragraph 12(2)(a), and

Canada les a achetées ou s'est engagé à les acheter;

b) le Sous-ministre est d'avis que le prix à l'exportation des marchandises importées, établi selon le paragraphe (1), est sujet à 5 caution parce que, selon le cas:

- (i) la vente des marchandises en vue de leur exportation vers le Canada a eu lieu entre personnes liées,
- (ii) un arrangement de nature compensatoire, d'une part, a eu lieu entre au moins deux des personnes suivantes: le fabricant, le producteur, le vendeur, l'exportateur, l'importateur se trouvant au Canada et toute autre personne, et, 15 d'autre part, a un effet ou porte sur, selon le cas:

- (A) le prix des marchandises,
- (B) la vente des marchandises,
- (C) le profit net réalisé par l'exportateur, le vendeur, le fabricant ou le producteur des marchandises,
- (D) le coût net pour l'importateur,

le prix à l'exportation des marchandises 25 importées est, selon le cas:

c) si les marchandises ont été vendues par l'importateur dans le même état que lors de leur importation et à une personne avec laquelle il n'était pas lié au moment de la vente, leur prix de vente moins un montant 30 égal à la somme des montants suivants:

- (i) tous les frais, notamment les droits prévus par la présente loi ou le Tarif des douanes et les taxes, engagés lors de l'importation des marchandises ou par la 35 suite et lors de leur vente par l'importateur ou avant cette vente,
- (ii) un montant pour les bénéfices, établi conformément aux règlements,
- (iii) les frais que la préparation des 40 marchandises importées en vue de leur expédition vers le Canada a entraînés, entre autres pour l'exportateur ou l'importateur, et venant en sus de ceux habituellement entraînés par des ventes pour 45 consommation intérieure,
- (iv) tous les autres frais engagés, entre autres par l'exportateur ou l'importateur, et découlant de l'exportation des

(v) where credit terms granted to the importer with respect to the sale of the imported goods by the exporter for export to Canada are more favourable than credit terms granted by the exporter to purchasers with respect to the sale of like goods for home consumption, an amount determined in the prescribed manner to reflect the value to the importer of the more favourable credit terms; and

(d) if the goods are imported for the purpose of assembly, packaging or further manufacture in Canada or for incorporation into other goods in the course of manufacture or production in Canada, the price of such goods as assembled, packaged or further manufactured, or of the goods into which the imported goods have been incorporated, when sold to a person with whom the vendor is not associated at the time of the sale, less an amount equal to the aggregate of

(i) an amount for profit on the sale of the assembled, packaged or further manufactured goods or of the goods into which the imported goods have been incorporated, determined in the prescribed manner,

(ii) the administrative, selling and all other costs incurred in selling the goods described in subparagraph (i),

(iii) the costs that are attributable or in any manner related to the assembly, packaging or further manufacture or to the manufacture or production of the goods into which the imported goods have been incorporated,

(iv) the costs, charges and expenses incurred in preparing the imported goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales for home consumption,

(v) where credit terms granted to the importer with respect to the sale of the imported goods by the exporter for export to Canada are more favourable than credit terms granted by the export-

5 marchandises importées ou consécutifs à leur expédition depuis le lieu désigné à l'alinéa 12(1)e) ou le lieu qui lui a été substitué en vertu de l'alinéa 12(2)a),

(v) le montant, établi de la façon réglementaire, qui correspond à ce que représentent, pour l'importateur, les facilités de paiement qui lui ont été consenties et qui sont afférentes à la vente des marchandises par l'exportateur en vue de leur exportation au Canada si ces facilités sont plus avantageuses que celles consenties par l'exportateur à des acheteurs pour des marchandises similaires destinées à la consommation intérieure; 15

d) si les marchandises sont importées pour une étape ultérieure de fabrication, pour montage ou pour conditionnement au Canada ou comme biens entrant dans la fabrication ou la production au Canada d'autres marchandises, leur prix de vente après ces opérations, ou le prix de vente des marchandises dans la fabrication desquelles elles ont été incorporées, à une personne à laquelle le vendeur n'est pas lié au moment de la vente, moins un montant égal à la somme des montants suivants:

(i) un montant pour les bénéfices, établi conformément aux règlements, qui ont été réalisés sur la vente, 30

(ii) les frais, notamment les frais administratifs et les frais de vente,

(iii) tous les autres frais entraînés par les opérations en cause,

(iv) les frais entraînés par la préparation des marchandises en vue de leur expédition vers le Canada et venant en sus de ceux habituellement entraînés par leur vente pour consommation intérieure, 40

(v) le montant, établi de la façon réglementaire, qui correspond à ce que représentent, pour l'importateur, les facilités de paiement qui lui ont été consenties et qui sont afférentes à la vente des marchandises par l'exportateur en vue de leur exportation au Canada si ces facilités sont plus avantageuses que celles consenties par l'exportateur à des acheteurs

er to purchasers with respect to the sale of like goods for home consumption, an amount determined in the prescribed manner to reflect the value to the importer of the more favourable credit terms, and

(vi) all other costs, charges and expenses, including Canadian customs duties and taxes, resulting from the exportation of the imported goods, or 10 arising after their shipment, from the place described in paragraph 12(1)(e) or the place substituted therefor by virtue of paragraph 12(2)(a); or

(e) in any cases not provided for by paragraphs (c) and (d), the price determined in such manner as the Minister specifies.

(3) Where the manufacturer, producer, vendor or exporter of any goods undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the anti-dumping duty that may be levied on the imported goods,

(a) such indemnity, payment or reimbursement is deemed not to be a compensatory arrangement within the meaning of subparagraph (2)(b)(ii); and

(b) the export price of the goods is the 30 export price thereof as otherwise determined under this Act minus the amount of the indemnity, payment or reimbursement.

**14.** (1) Where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in sections 12 and 13, the normal value or export price, as the case may be, shall be determined in such 40 manner as the Minister specifies.

(2) Where goods are or are to be shipped to Canada on consignment and there is no known purchaser in Canada of the goods, the export price of the goods shall be determined 45 in such manner as the Minister specifies.

teurs pour des marchandises similaires destinées à la consommation intérieure,

(vi) tous les autres frais, notamment les taxes et droits de douane canadiens, découlant de l'exportation des marchandises importées ou consécutifs à leur expédition vers le Canada depuis le lieu désigné à l'alinéa 12(1)e) ou le lieu qui lui a été substitué en vertu de l'alinéa 12(2)a);

10 e) dans les cas que ne prévoient pas les alinéas c) et d), le prix établi conformément aux modalités que fixe le Ministre.

(3) Lorsque le fabricant, le producteur, le vendeur ou l'exportateur de marchandises 15 s'engage, de quelque façon que ce soit, à payer pour le compte de l'importateur ou de l'acheteur se trouvant au Canada ou à lui rembourser tout ou partie des droits antidumping qui peuvent être exigibles sur les 20 marchandises importées ou à l'indemniser à cet égard:

a) les paiements, les remboursements ou les indemnités, selon le cas, sont réputés ne pas être des arrangements compensatoires 25 au sens du sous-alinéa (2)b)(ii);

b) le prix à l'exportation des marchandises est celui qui est établi selon la présente loi moins le montant des paiements, des remboursements ou des indemnités.

Arrangements  
touchant les  
droits  
antidumping

Renseigne-  
ments  
insuffisants

**14.** (1) La valeur normale et le prix à l'exportation sont établis selon les modalités que fixe le Ministre dans les cas où le Sous-ministre est d'avis qu'il est impossible de les établir conformément à l'article 12 ou 13 vu 35 l'insuffisance ou l'inaccessibilité des renseignements nécessaires.

(2) Le prix à l'exportation de marchandises expédiées ou destinées à l'expédition vers le Canada pour y être mises en consignation 40 alors qu'on ne connaît pas d'acheteur se trouvant au Canada, est établi selon les modalités que fixe le Ministre.

Expédition pour  
mise en  
consignation

**15.** (1) Where goods are exported to Canada from one country but pass in transit through another country, the normal value and export price of the goods shall, subject to such terms and conditions as to shipment, documentation, warehousing, transhipment or the like as are prescribed, be determined as if the goods were shipped directly to Canada from such first mentioned country.

(2) Where any imported goods

(a) are shipped indirectly to Canada from the country of origin through one or more other countries, and

(b) would, but for this section, have a normal value as computed under section 15 12 that is less than the normal value would be if the country of export were the country of origin,

the normal value and export price of the goods shall, notwithstanding any other provision of this Act, be determined as if the goods were shipped directly to Canada from the country of origin.

#### PROCEDURE IN DUMPING INVESTIGATIONS

**16.** (1) The Deputy Minister shall cause an investigation to be initiated respecting the 25 dumping of any goods forthwith on his own initiative or, where he receives a written complaint by or on behalf of producers in Canada of like goods, within thirty days after the date on which written notice is 30 given by or on behalf of the Deputy Minister to the complainant that the complaint is properly documented if

(a) he is of the opinion that there is evidence that the goods have been or are 35 being dumped; and

(b) either

(i) he is of the opinion that there is evidence, or

(ii) the Tribunal advises that it is of the 40 opinion that there is evidence,

that the dumping referred to in paragraph (a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation.

**15.** (1) La valeur normale et le prix à l'exportation de marchandises exportées vers le Canada en provenance d'un pays donné et transitant par un autre pays sont établis de la même façon que si ces marchandises avaient été expédiées directement vers le Canada à partir du premier pays, sous réserve des modalités réglementaires applicables notamment à l'expédition, aux documents à fournir, à l'entreposage et au transbordement. 5 10

10 (2) Par dérogation à la présente loi, la valeur normale et le prix à l'exportation de marchandises importées sont établis de la même façon que si les marchandises avaient été expédiées directement vers le Canada à 15 partir du pays d'origine, dans les cas où:

a) les marchandises sont expédiées indirectement vers le Canada à partir du pays d'origine;

b) la valeur normale de ces marchandises, 20 calculée conformément à l'article 12, est, abstraction faite du présent article, inférieure à ce qu'elle serait si le pays d'exportation était le même que le pays d'origine.

#### ENQUÊTES DE DUMPING MENÉES PAR LE SOUS-MINISTRE

**16.** (1) De sa propre initiative ou, s'il 25 Ouverture d'enquête reçoit une plainte déposée par des producteurs de marchandises similaires au Canada ou en leur nom, dans les trente jours suivant la date à laquelle il informe ou fait informer, par avis écrit, le plaignant de ce que le 30 dossier est complet, le Sous-ministre fait ouvrir une enquête de dumping sur les marchandises au sujet desquelles:

a) il est d'avis que des éléments de preuve indiquent qu'elles ont été ou sont sous-évaluées;

b) il est d'avis ou le Tribunal fait savoir qu'il est d'avis que des éléments de preuve indiquent que le dumping soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible.

(2) Where the Deputy Minister receives a written complaint respecting the dumping of goods that is not properly documented, he shall cause the complainant to be informed of such receipt and of the additional information and material that is needed in order for the complaint to be properly documented.

(3) Where, after receipt of a properly documented written complaint respecting the dumping of any goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, he shall cause a written notice of his decision to be sent to the complainant setting out therein the reasons for such decision.

(4) Where, after receipt of a properly documented written complaint respecting the dumping of any goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated by reason only that in his opinion there is no evidence that the dumping of the goods in respect of which he has so decided has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

(a) the Deputy Minister, or

(b) the complainant, within thirty days after the date of the notice referred to in subsection (3),

may refer to the Tribunal the question whether there is any evidence that the dumping of the goods in respect of which the Deputy Minister has so decided has caused, is causing or is likely to cause material injury or has caused or is causing retardation.

(5) The Deputy Minister shall, on receipt of a notice in writing from the Tribunal pursuant to subsection 20(4) respecting the dumping of any goods, cause an investigation to be initiated respecting the dumping of any goods described in the notice.

(6) Where the Deputy Minister causes an investigation to be initiated respecting the dumping of any goods, he shall cause notice of the investigation

(a) to be given to the importer, the exporter, the government of the country of

(2) S'il reçoit un dossier incomplet, le Sous-ministre en fait informer le plaignant en lui précisant les renseignements et pièces complémentaires à fournir.

(3) S'il est saisi d'un dossier complet mais décide de ne pas faire ouvrir d'enquête ou de ne pas en faire ouvrir une sur certaines des marchandises, le Sous-ministre fait envoyer au plaignant un avis motivé.

(4) Si le Sous-ministre, saisi d'un dossier complet, décide de ne pas faire ouvrir d'enquête ou de ne pas en faire ouvrir une sur certaines des marchandises pour la seule raison que, selon lui, il n'y a pas d'éléments de preuve indiquant que le dumping soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible, il est loisible:

a) soit au Sous-ministre,

b) soit au plaignant, dans les trente jours suivant la date de l'avis prévu au paragraphe (3),

de demander au Tribunal de se prononcer sur cette question.

(5) Sur réception d'un avis donné par le Tribunal en vertu du paragraphe 20(4), le Sous-ministre fait ouvrir une enquête de dumping sur les marchandises décrites dans l'avis.

(6) A l'occasion de toute enquête de dumping qu'il fait ouvrir, le Sous-ministre:

a) fait donner avis de cette enquête à l'importateur, à l'exportateur, au gouvernement du pays d'exportation, au plaignant,

export, the complainant, if any, and such other persons as may be prescribed; and  
(b) to be published in the *Canada Gazette*.

(7) Where, at any time before making a preliminary determination in an investigation respecting the dumping of goods,

(a) the Deputy Minister is satisfied in respect of some or all of such goods that

(i) there is insufficient evidence of 10 dumping to justify proceeding with the investigation in relation thereto, or

(ii) the margin of dumping thereof or the actual or potential volume of dumped goods is negligible, or 15

(b) subject to subsection (8), in the case of an investigation initiated pursuant to subsection (1) without the advice of the Tribunal, the Deputy Minister comes to the conclusion in respect of some or all of 20 such goods that there is no evidence that the dumping thereof has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

the Deputy Minister shall

(c) cause the investigation to be terminated with respect to the goods in respect of which he is so satisfied or has come to such conclusion, and

(d) cause notice of such termination to be 30 given and published as provided in subsection (6);

and the Deputy Minister shall not make a preliminary determination of dumping in respect of the goods referred to in paragraph 35 (c).

(8) Where, in the case of an investigation respecting the dumping of goods described in paragraph (7)(b), the Deputy Minister comes to the conclusion with respect to some 40 or all of such goods that there is no evidence that the dumping thereof has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

(a) he shall cause notice of his conclusion 45 to be given and published as provided in subsection (6), and

(b) he or the complainant, if any, may, within thirty days from the date of the

s'il en est, et à toutes les personnes que prévoient les règlements;

b) fait publier cet avis dans la *Gazette du Canada*.

5 (7) Si le Sous-ministre, avant de rendre une décision provisoire lors d'une enquête de dumping, en arrive à l'une des conclusions suivantes au sujet des marchandises ou de certaines d'entre elles:

a) il est convaincu que, selon le cas; 10

(i) il n'y a pas assez d'éléments prouvant le dumping pour justifier la poursuite de l'enquête,

(ii) leur marge de dumping ou le volume réel ou éventuel de marchandises sous-évaluées est négligeable; 15

b) sous réserve du paragraphe (8), il conclut, au cours d'une enquête qu'il a fait ouvrir en application du paragraphe (1) sans que le Tribunal n'ait donné son avis, 20 qu'aucun élément de preuve n'indique que le dumping soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible,

25 il doit:

c) faire clore l'enquête sur les marchandises objet de ses conclusions et n'a pas à rendre de décision provisoire à leur sujet;

d) faire donner et publier avis de cette clôture selon les modalités prévues au 30 paragraphe (6).

5 Clôture de l'enquête

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Avis donné avant la clôture de l'enquête

(8) Si le Sous-ministre en arrive à la conclusion prévue à l'alinéa (7)b):

a) lui-même en fait donner et publier avis selon les modalités prévues au paragraphe 35 (6);

b) lui-même ou le plaignant, s'il en est, peut, dans les trente jours suivant l'avis prévu à l'alinéa a), soumettre au Tribunal la question de savoir s'il existe des éléments de preuve indiquant que le dumping des marchandises en cause soit cause, a causé ou est susceptible de causer un pré-

notice given pursuant to paragraph (a), refer to the Tribunal the question whether there is any evidence that the dumping of the goods in respect of which he has come to that conclusion has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

and where a reference has been made to the Tribunal under paragraph (b), the Deputy Minister may not terminate the investigation 10 with respect to the goods in respect of which he has come to that conclusion by reason only that in his opinion there is no evidence that the dumping of the said goods has caused, is causing or is likely to cause ma-15 terial injury or has caused or is causing retardation, unless the Tribunal advises that in its opinion there is no such evidence.

Tribunal to give advice

(9) Where a reference is made to the Tribunal pursuant to this section or section 20 19 on the question whether there is any evidence that the dumping or subsidizing of goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation, the Tribunal shall 25 render its advice on the question

- (a) without holding any hearings thereon;
- (b) on the basis of such information as is available to it; and
- (c) as soon as possible after the date on 30 which the reference is made to it and, in any event, not later than thirty days after such date.

Preliminary determination of dumping

17. (1) Subject to subsections (2) and (3), within ninety days after the initiation of an investigation respecting the dumping of goods, the Deputy Minister shall make a preliminary determination of dumping with respect to all such goods in respect of which the investigation has not been terminated 40 pursuant to subsection 16(7) by

- (a) estimating the margin of dumping of the goods to which the preliminary determination applies, using the information available to him at the time the estimate is 45 made; and
- (b) specifying the goods to which the preliminary determination applies.

judice sensible soit cause ou a causé un retard sensible.

En cas de renvoi devant le Tribunal en vertu de l'alinéa b), le Sous-ministre ne peut clore 5 l'enquête que si le Tribunal lui fait savoir qu'il partage sa conclusion.

Renvoi devant le Tribunal

(9) Après avoir été saisi du renvoi visé au présent article ou à l'article 19, le Tribunal donne son avis:

- a) sans audience;
- b) en se fondant sur les renseignements dont il dispose;
- c) dans les meilleurs délais mais, au plus tard, dans les trente jours.

10

17. (1) Sous réserve des paragraphes (2) et (3), dans les quatre-vingt-dix jours suivant l'ouverture d'une enquête de dumping, le Sous-ministre rend une décision provisoire de dumping concernant les marchandises au sujet desquelles n'a pas eu lieu la clôture 20 d'enquête prévue au paragraphe 16(7). A cet effet:

- a) il fait l'estimation de la marge de dumping des marchandises, compte tenu des renseignements dont il dispose;
- b) il précise les marchandises visées par la décision.

25

(2) Subject to subsection (3), where, in any investigation respecting the dumping of goods, the Deputy Minister, before the expiration of the ninety days referred to in subsection (1), causes written notice to be given to the persons referred to in paragraph 16(6)(a) and notice to be published in the manner described in paragraph 16(6)(b) that by reason of

- (a) the complexity or novelty of the issues presented by the investigation, 10
- (b) the variety of goods or number of persons involved in the investigation,
- (c) the difficulty of obtaining satisfactory evidence in the investigation, or 15
- (d) any other circumstance specified in the notice that, in the opinion of the Deputy Minister, makes it unusually difficult for him to decide within such ninety days whether to terminate the investigation, make a preliminary determination of dumping or accept an undertaking, 20

his decision will not be made within such ninety days, the period of ninety days referred to in subsection (1) is thereupon 25 extended to one hundred and thirty-five days.

(3) Where, in any investigation respecting the dumping of goods, notice is given and published pursuant to paragraph 16(8)(a), there shall not be counted as one of the ninety days referred to in subsection (1) or as one of the one hundred and thirty-five days referred to in subsection (2)

- (a) in any case where the question referred to in that paragraph is not referred to the Tribunal, any of the thirty days referred to in paragraph 16(8)(b); or 35
- (b) in any other case, any day in the period commencing on the day following 40 the date of the notice given pursuant to paragraph 16(8)(a) and ending on the day on which the Tribunal renders its advice on the question referred to in paragraph 16(8)(b). 45

(4) Where the Deputy Minister makes a preliminary determination of dumping in respect of any goods, he shall

(2) Sous réserve du paragraphe (3), le délai prévu au paragraphe (1) est porté à cent-trente-cinq jours si le Sous-ministre, avant l'expiration des quatre-vingt-dix jours prévus à ce paragraphe, indique, dans un avis écrit donné et publié selon les modalités prévues au paragraphe 16(6), que sa décision ne sera pas rendue dans le délai prévu pour l'une ou l'autre des raisons suivantes: 5

- a) la complexité ou le caractère inédit des 10 points soulevés par l'enquête;
- b) la diversité des marchandises ou le nombre de personnes touchées par l'enquête;
- c) les difficultés rencontrées pour obtenir 15 des éléments de preuve suffisants;
- d) toute autre circonstance qui, selon le Sous-ministre, fait qu'il lui est exceptionnellement difficile de déterminer, dans le délai imparti, s'il doit clore l'enquête, 20 rendre une décision provisoire de dumping ou accepter un engagement.

(3) En cas d'avis prévu à l'alinéa 16(8)a), le délai visé au paragraphe (1) ou au paragraphe (2) ne comprend:

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- a) ni le délai visé à l'alinéa 16(8)b), s'il n'y a pas eu le renvoi prévu à cet alinéa;
- b) ni, dans le cas d'un renvoi prévu à l'alinéa 16(8)b), la période commençant le lendemain de la date de l'avis donné conformément à l'alinéa 16(8)a) et se terminant à la date à laquelle le Tribunal donne son avis après avoir été saisi du renvoi.

(4) Après avoir rendu une décision provisoire de dumping, le Sous-ministre:

35

- a) en fait donner et publier avis selon les modalités prévues au paragraphe 16(6);

(a) cause notice of the determination to be given and published as provided in subsection 16(6); and

(b) cause to be filed with the Secretary written notice of the determination, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.

18. (1) Within ninety days after making a preliminary determination of dumping in respect of any goods, the Deputy Minister shall

(a) where, on the evidence available to him, he is satisfied in respect of any of those goods that

(i) the goods have been or are being dumped, and

(ii) the margin of dumping of the goods and the actual or potential volume of dumped goods are not negligible,

make a final determination of dumping with respect to the goods in respect of which he is so satisfied by specifying the goods to which the determination applies and the margin of dumping of such goods; or

(b) where, on the evidence available to him, he is not satisfied in accordance with paragraph (a) in respect of some or all of those goods, cause the investigation to be terminated with respect to the goods in respect of which he is not so satisfied.

(2) Where the Deputy Minister makes a final determination of dumping in respect of any goods, he shall cause notice of the determination to be

(a) given and published as provided in subsection 16(6); and

(b) filed with the Secretary in writing, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.

(3) Where the Deputy Minister causes an investigation respecting the dumping of any goods to be terminated pursuant to subsection (1) in respect of some or all of those

b) en fait déposer auprès du Secrétaire un avis motivé accompagné des pièces requises en l'espèce par les règles du Tribunal.

5

18. (1) Dans les quatre-vingt-dix jours suivant sa décision provisoire de dumping, le Sous-ministre, selon le cas:

a) rend une décision définitive de dumping en précisant les marchandises objet de sa décision et en donnant leur marge de dumping, si, au vu des éléments de preuve dont il dispose, il constate les faits suivants:

(i) les marchandises ont été ou sont sous-évaluées,

(ii) la marge de dumping de ces marchandises ainsi que leur volume réel ou éventuel ne sont pas négligeables;

b) fait clore l'enquête sur les marchandises au sujet desquelles, au vu des éléments de preuve dont il dispose, il n'en est pas arrivé à la constatation prévue à l'alinéa a).

Décision définitive ou clôture de l'enquête

Avis de la décision définitive

(2) Après avoir rendu la décision définitive prévue au paragraphe (1), le Sous-ministre:

a) en fait donner et publier avis selon les modalités prévues au paragraphe 16(6);

b) en fait déposer auprès du Secrétaire un avis motivé accompagné des pièces requises en l'espèce par les règles du Tribunal.

Avis de clôture de l'enquête

(3) Après avoir fait clore une enquête conformément au paragraphe (1), le Sous-ministre:

goods, he shall cause notice of such termination to be

- (a) given and published as provided in subsection 16(6); and
- (b) given in writing to the Secretary.

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#### PROCEDURE IN SUBSIDY INVESTIGATIONS

**19.** (1) The Deputy Minister shall cause an investigation to be initiated respecting the subsidizing of any goods forthwith on his own initiative or, where he receives a written complaint by or on behalf of producers in Canada of like goods, within thirty days after the date on which written notice is given by or on behalf of the Deputy Minister to the complainant that the complaint is properly documented if

- (a) he is of the opinion that there is evidence that the goods have been or are being subsidized; and
- (b) either
  - (i) he is of the opinion that there is evidence, or
  - (ii) the Tribunal advises that it is of the opinion that there is evidence,

that the subsidizing referred to in paragraph (a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation.

(2) Where the Deputy Minister receives a written complaint respecting the subsidizing of goods that is not properly documented, he shall cause the complainant to be informed of such receipt and of the additional information and material that is needed in order for the complaint to be properly documented.

(3) Where, after receipt of a properly documented written complaint respecting the subsidizing of any goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, he shall cause a written notice of his decision to be sent to the complainant setting out therein the reasons for such decision.

(4) Where, after receipt of a properly documented written complaint respecting the subsidizing of any goods, the Deputy Minis-

- a) en fait donner et publier avis selon les modalités prévues au paragraphe 16(6);
- b) en fait donner un avis écrit au Secrétaire.

#### ENQUÊTES DE SUBVENTIONNEMENT MENÉES PAR LE SOUS-MINISTRE

**19.** (1) De sa propre initiative ou, s'il reçoit une plainte écrite déposée par des producteurs de marchandises similaires au Canada ou en leur nom, dans les trente jours suivant la date à laquelle il informe ou fait informer, par avis écrit, le plaignant de ce que le dossier est complet, le Sous-ministre fait ouvrir une enquête de subventionnement sur les marchandises au sujet desquelles:

- a) il est d'avis que des éléments de preuve indiquent qu'elles ont été ou sont subventionnées;
- b) il est d'avis ou le Tribunal fait savoir qu'il est d'avis que des éléments de preuve indiquent que le subventionnement soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible.

5 Ouverture d'enquête

(2) S'il reçoit un dossier incomplet, le Sous-ministre en fait informer le plaignant en lui précisant les renseignements et pièces complémentaires à fournir.

Avis

(3) S'il est saisi d'un dossier complet mais décide de ne pas faire ouvrir d'enquête ou de ne pas en faire ouvrir une sur certaines des marchandises, le Sous-ministre fait envoyer au plaignant un avis motivé.

Idem

(4) Si le Sous-ministre, saisi d'un dossier complet, décide de ne pas faire ouvrir d'enquête ou de ne pas en faire ouvrir une sur

Renvoi devant le Tribunal

ter decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated by reason only that in his opinion there is no evidence that the subsidizing of the goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

- (a) the Deputy Minister, or
- (b) the complainant, within thirty days after the date of the notice referred to in 10 subsection (3),

may refer to the Tribunal the question whether there is any evidence that the subsidizing of the goods in respect of which the Deputy Minister has so decided has caused, 15 is causing or is likely to cause material injury or has caused or is causing retardation.

(5) The Deputy Minister shall, on receipt of a notice in writing from the Tribunal pursuant to subsection 20(4) respecting the 20 subsidizing of any goods, cause an investigation to be initiated respecting the subsidizing of any goods described in the notice.

(6) Where the Deputy Minister causes an investigation to be initiated respecting the 25 subsidizing of any goods, subsections 16(6) to (8) and sections 17 and 18 apply with respect to the investigation as if the references therein to

- (a) "dumping" were references to "subsi- 30 dizing",
- (b) "dumped" were references to "subsi- dized", and
- (c) "margin of dumping of" were refer- ences to "amount of the subsidy on", 35

except that

(d) subsection 17(1) shall be read as though the following paragraphs were substituted for paragraphs (a) and (b) thereof: 40

"(a) estimating the amount of the subsidy on the goods to which the preliminary determination applies, using the information available to him at the time the estimate is made; 45

(b) specifying the goods to which the preliminary determination applies; and

certaines des marchandises pour la seule raison que, selon lui, il n'y a pas d'éléments de preuve indiquant que le subventionnement soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a 5 causé un retard sensible, il est loisible:

- a) soit au Sous-ministre,
- b) soit au plaignant, dans les trente jours suivant la date de l'avis prévu au paragra- 10 phé (3),

de demander au Tribunal de se prononcer sur cette question.

(5) Sur réception d'un avis donné par le Tribunal en vertu du paragraphe 20(4), le 20 Sous-ministre fait ouvrir une enquête de sub- 15 ventionnement sur les marchandises décrites dans l'avis.

Ouverture d'enquête

(6) Les paragraphes 16(6) à (8) ainsi que 25 les articles 17 et 18 s'appliquent, avec les adaptations qui suivent, aux enquêtes de sub- 20 ventionnement que fait ouvrir le Sous-ministre:

- a) «subventionnement» remplace «dumping»;
- b) «subventionné» remplace «sous-évalué»; 25
- c) «montant de la subvention» remplace «marge de dumping»;
- d) l'alinéa 17(1)c) qui suit s'ajoute aux alinéas 17(1)a) et b):

Applicabilité des procédures de dumping

- c) il précise si les marchandises font 30 l'objet d'une subvention à l'exportation»;
- e) l'alinéa 18(1)a) est remplacé par ce qui suit:

(c) in any case where a subsidy referred to in paragraph (a) is an export subsidy, so specifying", and  
 (e) that portion of paragraph 18(1)(a) following subparagraph (ii) thereof shall be 5 read as though the following were substituted therefor:

“make a final determination of subsidizing with respect to the goods in respect of which he is so satisfied by 10  
 (iii) specifying the goods to which the final determination applies,  
 (iv) specifying the amount of the subsidy on such goods, and  
 (v) where a subsidy is an export sub- 15  
 sidy, so specifying.”

«a) rend une décision définitive de subventionnement portant sur les marchandises au sujet desquelles, au vu des éléments de preuve dont il dispose, il constate les faits suivants: 5

(i) les marchandises ont été ou sont subventionnées,  
 (ii) le montant de la subvention octroyée à ces marchandises ainsi que le volume réel ou éventuel de ces marchandises ne sont pas négligeables. 10

Dans le but de rendre la décision définitive, le Sous-ministre:

(iii) précise les marchandises objet de la décision définitive, 15  
 (iv) donne le montant de la subvention qui leur est octroyée,  
 (v) précise si les marchandises font l'objet d'une subvention à l'exportation;» 20

#### INQUIRIES BY TRIBUNAL

Tribunal to make inquiry

**20.** (1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 17(4) of a notice of a preliminary determination of dumping or subsidizing in respect of any goods, shall make inquiry as to whether

(a) in the case of any goods to which the preliminary determination applies, the dumping or subsidizing of the goods 25  
 (i) has caused, is causing or is likely to cause material injury or has caused or is causing retardation,  
 (ii) would have caused material injury except for the fact that provisional duty 30 was applied in respect of the goods;  
 (b) in the case of any dumped goods to which the preliminary determination applies,  
 (i) either

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#### ENQUÊTES MENÉES PAR LE TRIBUNAL

Enquête du Tribunal

**20.** (1) Dès réception par le Secrétaire de l'avis de décision provisoire de dumping ou de subventionnement prévu au paragraphe 17(4), le Tribunal fait enquête sur les marchandises objet de cette décision pour 25 déterminer:

a) si le dumping des marchandises en cause ou leur subventionnement:  
 (i) soit cause, a causé ou est susceptible de causer un préjudice sensible soit 30 cause ou a causé un retard sensible,  
 (ii) soit aurait causé un préjudice sensible sans l'application de droits provisoires aux marchandises;  
 b) si, dans le cas d'une décision provisoire 35 de dumping:  
 (i) d'une part:  
 (A) ou bien a eu lieu une importation considérable de marchandises similai-

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury or would have caused material injury except for the application of anti-dumping measures, or 5  
(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that such dumping would cause material injury, and 10

(ii) material injury has been caused by reason of the fact that the dumped goods

(A) constitute a massive importation 15 into Canada, or  
(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short 20 period of time,

and it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of such material injury; and 25

(c) in the case of any subsidized goods to which the determination applies where a subsidy on the goods is an export subsidy,

(i) material injury has been caused by reason of the fact that the subsidized 30 goods

(A) constitute a massive importation into Canada, or  
(B) form part of a series of importations into Canada, which importations 35 in the aggregate are massive and have occurred within a relatively short period of time, and

(ii) a countervailing duty should be imposed retroactively on such subsidized 40 goods in order to prevent the recurrence of such material injury.

(2) Where the Tribunal commences an inquiry pursuant to subsection 25(2) in respect of the dumping or subsidizing of 45 goods, the Tribunal shall make inquiry as to whether the dumping or subsidizing

(a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation; or 50

res dont le dumping a causé un préjudice sensible ou en aurait causé si des mesures antidumping n'avaient pas été prises,

(B) ou bien l'importateur des marchandises était ou aurait dû être au courant du dumping que pratiquait l'exportateur et du fait que ce dumping causerait un préjudice sensible; 5

(ii) d'autre part, un préjudice sensible a 10 été causé du fait que les marchandises sous-évaluées:

(A) soit représentent une importation massive,  
(B) soit appartiennent à une série 15 d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

et le Tribunal estime nécessaire que soient imposés des droits sur les marchandises importées afin de prévenir la réapparition du préjudice; 20

c) si, dans le cas d'une décision provisoire de subventionnement portant sur des marchandises subventionnées qui font l'objet 25 d'une subvention à l'exportation:

(i) d'une part, un préjudice sensible a été causé du fait que les marchandises subventionnées:

(A) soit représentent une importation 30 massive,  
(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte, 35

(ii) d'autre part, des droits compensateurs devraient être imposés à titre rétroactif sur les marchandises subventionnées afin de prévenir la réapparition du préjudice. 40

Idem

(2) Lors d'une enquête ouverte en vertu du paragraphe 25(2), le Tribunal détermine si le dumping ou le subventionnement:

a) soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a 45 causé un retard sensible;  
b) soit aurait causé, pendant la période suivant l'acceptation d'un engagement por-

(b) would have caused, during any period after an undertaking with respect to the goods was accepted, material injury except for the fact that the undertaking was accepted.

(3) Where the Tribunal commences an inquiry pursuant to subsection 26(2) with respect to any dumped or subsidized goods in respect of which an undertaking has been terminated, the Tribunal shall make inquiry 10 as to whether the dumping or subsidizing

(a) has caused material injury; or  
(b) would have caused material injury except for the fact that an undertaking was accepted in respect of the goods.

(4) Where, during an inquiry referred to in subsection (1), (2) or (3) respecting the dumping or subsidizing of any goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and  
(b) the dumping or subsidizing referred to in paragraph (a) has caused, is causing or is likely to cause material injury or has 30 caused or is causing retardation,

the Tribunal, by notice in writing setting out the description of such goods, may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping or subsidizing of such goods.

(5) In any inquiry referred to in subsection (1), (2) or (3) in respect of any goods, the Tribunal shall, as soon as possible after the date of receipt by the Secretary of notice of a 40 final determination of dumping or subsidizing with respect to any such goods, but, in any event, not later than one hundred and twenty days after the date of receipt by

(a) in the case of an inquiry referred to in 45 subsection (1), the Secretary of notice of a preliminary determination with respect to the goods,

tant sur les marchandises sous-évaluées, un préjudice sensible sans l'acceptation de cet engagement.

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(3) Lors d'une enquête ouverte en vertu du 5 paragraphe 26(2), le Tribunal détermine si le dumping ou le subventionnement:

a) soit a causé un préjudice sensible;  
b) soit aurait causé un préjudice sensible sans l'acceptation d'un engagement portant sur les marchandises.

Idem

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(4) Si, au cours d'une enquête visée au 15 paragraphe (1), (2) ou (3) au sujet du dumping ou du subventionnement de marchandises objet d'une décision provisoire prévue à la présente loi, le Tribunal est d'avis:

a) que des éléments de preuve indiquent que des marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles qui font l'objet de la décision provisoire ont été ou sont sous-évaluées ou 20 subventionnées,  
b) que le dumping ou le subventionnement visé à l'alinéa a) soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible,

25 il peut, par avis écrit donnant la description des marchandises en cause, ordonner au Sous-ministre de faire ouvrir une enquête sur leur dumping ou leur subventionnement.

Enquête ordonnée par le Tribunal

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(5) Le Tribunal rend, à l'égard de marchandises objet d'une décision définitive de dumping ou de subventionnement, les ordonnances ou prend les conclusions indiquées dans chaque cas en y précisant les marchandises concernées et, le cas échéant, leur fournissoir et leur pays d'exportation. Ces ordonnances doivent être rendues ou ces conclusions prises dans les meilleurs délais suivant la date à laquelle le Secrétaire reçoit l'avis de cette décision définitive, s'il s'agit 40 d'une enquête prévue au paragraphe (1), (2)

Ordonnances ou conclusions du Tribunal

Idem

Tribunal may direct investigation

Tribunal to make order or finding

(b) in the case of an inquiry referred to in subsection (2), the Tribunal of a written request pursuant to subsection 25(2) with respect to the goods, or

(c) in the case of an inquiry referred to in subsection (3), the Secretary of notice of termination of an undertaking with respect to the goods pursuant to paragraph 26(1)(e),

make such order or finding with respect to 10 the goods to which the final determination applies as the nature of the matter may require, and shall declare to what goods, including, where applicable, from what supplier and from what country of export, the 15 order or finding applies.

(6) The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of such production, shall take fully into account 20 the provisions of

(a) in a dumping case, paragraph 1 of Article 4 of the Agreement signed at Geneva, Switzerland, on December 17, 1979 on Implementation of Article VI of 25 the General Agreement on Tariffs and Trade; and

(b) in a subsidy case, paragraph 7 of Article 6 of the Subsidies and Countervailing Duties Agreement.

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(7) The Secretary shall forward by registered mail to the Deputy Minister, the importer, the exporter and such other persons as may be specified by the rules of the Tribunal

(a) forthwith after it is made, a copy of each order or finding made by the Tribunal pursuant to subsection (5); and

(b) not later than fifteen days after the making of an order or finding by the Tribunal pursuant to subsection (5), a copy of the reasons for making the order or finding.

(8) An order or finding made by the Tribunal pursuant to subsection (5) with respect 45 to any dumped or subsidized goods, other than an order or finding described in any of

ou (3), mais ces délais ne doivent toutefois pas dépasser le cent-vingtième jour suivant, selon le cas:

a) la date à laquelle le Secrétaire reçoit 5 l'avis de décision provisoire portant sur ces marchandises, s'il s'agit d'une enquête prévue au paragraphe (1);

b) la date à laquelle le Tribunal reçoit, relativement aux marchandises, la demande prévue au paragraphe 25(2), s'il 10 s'agit d'une enquête prévue au paragraphe (2);

c) la date à laquelle le Secrétaire reçoit avis qu'il a été mis fin, en vertu de l'alinéa 26(1)e), à un engagement portant sur ces 15 marchandises, s'il s'agit d'une enquête prévue au paragraphe (3).

(6) En examinant les questions relatives à la production ou à la mise en production de marchandises au Canada, le Tribunal tient 20 compte des dispositions suivantes:

a) s'il s'agit d'un dumping, le paragraphe 1 de l'article 4 de l'Accord, signé à Genève le 17 décembre 1979, relatif à la mise en oeuvre de l'article VI de l'Accord général 25 sur les tarifs douaniers et le commerce;

b) s'il s'agit d'un subventionnement, le paragraphe 7 de l'article 6 de l'Accord.

Applicabilité  
des accords  
internationaux

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(7) Le Secrétaire envoie, par courrier recommandé, au Sous-ministre, à l'importateur, à l'exportateur et aux autres personnes que prévoient les règles du Tribunal copie 30 des textes suivants:

Copie des  
ordonnances ou  
conclusions

a) dès qu'elles ont été rendues ou prises en vertu du paragraphe (5), les ordonnances 35 ou conclusions du Tribunal;

b) dans les quinze jours suivant la date des ordonnances ou conclusions, l'exposé des motifs correspondants.

(8) Exception faite des ordonnances ou 40 conclusions visées à l'un des articles 3 à 6, les ordonnances ou conclusions prévues au paragraphe (5) closent les procédures relatives au

Clôture des  
procédures

sections 3 to 6, terminates all proceedings under this Act respecting the dumping or subsidizing of the goods.

**21.** The Tribunal shall inquire into and report to the Governor in Council on any matter or thing in relation to

- (a) the importation of goods into Canada that may cause or threaten injury to, or that may retard the establishment of, the production of any goods in Canada, or
- (b) the importation of services into Canada that may cause or threaten injury to, or that may retard, the provision of any services in Canada

that the Governor in Council refers to the Tribunal for inquiry and report.

**22.** (1) Subject to subsection (2), the Deputy Minister may accept an undertaking with respect to dumped or subsidized goods where he is of the opinion that observance of the undertaking will eliminate

- (a) the margin of dumping of or the subsidy on the goods; or
- (b) any material injury or retardation that is being or any material injury that is likely to be caused by the dumping or subsidizing.

(2) The Deputy Minister shall not accept an undertaking with respect to dumped or subsidized goods where

- (a) he has made a preliminary determination of dumping or subsidizing with respect to the goods; or
- (b) he is of the opinion that it would not be practicable to administer the undertaking.

**23.** Forthwith after accepting an undertaking with respect to dumped or subsidized goods, the Deputy Minister shall

- (a) make a preliminary determination of dumping or subsidizing with respect to the goods by
  - (i) estimating the margin of dumping of or the amount of the subsidy on the

dumping ou au subventionnement des marchandises en cause.

**21.** Le Tribunal saisi d'un renvoi par le gouverneur en conseil ouvre une enquête et fait rapport au gouverneur en conseil sur tout ce qui concerne, selon le cas:

- a) l'importation de marchandises qui peut causer ou menacer de causer un préjudice à la production de marchandises au Canada ou peut retarder la mise en production de marchandises au Canada;
- b) l'importation de services qui peut causer ou menacer de causer un préjudice à la fourniture de services au Canada ou qui peut retarder la fourniture de services au Canada.

#### UNDERTAKINGS

#### ENGAGEMENTS

**22.** (1) Sous réserve du paragraphe (2), le Sous-ministre peut accepter les engagements qui, d'après lui:

- a) ou bien éliminent la marge de dumping des marchandises en cause ou la subvention qui leur est octroyée;
- b) ou bien font disparaître soit le préjudice ou le retard sensibles que cause le dumping ou le subventionnement soit le préjudice qu'il est susceptible de causer.

(2) Le Sous-ministre ne peut accepter d'engagement dans les cas suivants:

- a) il a rendu une décision provisoire de dumping ou de subventionnement au sujet des marchandises en cause;
- b) il est d'avis qu'il ne serait pas possible de l'exécuter.

**23.** Dès qu'il a accepté un engagement, le Sous-ministre:

- a) rend une décision provisoire de dumping ou de subventionnement concernant les marchandises en cause et, à cet effet:
  - (i) il fait l'estimation de la marge de dumping des marchandises ou du montant de la subvention qui leur est

goods, using the information available to him at the time the estimate is made, and

(ii) specifying the goods to which the preliminary determination applies;

(b) cause further action in the investigation with respect to the goods to be suspended; and

(c) cause notice of the acceptance of the undertaking and of the things done pursuant to paragraphs (a) and (b)

(i) to be given and published as provided in subsection 16(6), and

(ii) to be filed with the Secretary in writing, stating the reason for making the preliminary determination, together with such other material as may be required under the rules of the Tribunal.

**24.** Where the Deputy Minister accepts an undertaking with respect to any goods, subsection 9(1) does not apply to such goods during the period commencing on the day the Deputy Minister in fact makes a preliminary determination with respect to the goods pursuant to paragraph 23(a) and ending on the day the undertaking is terminated pursuant to subsection 26(1).

**25.** (1) Subject to subsections (2) and 26(2), where notice of acceptance of an undertaking with respect to dumped or subsidized goods is filed with the Secretary pursuant to subparagraph 23(c)(ii), the Tribunal shall not commence an inquiry in respect of the goods.

(2) Where, within thirty days after the date of the notice of acceptance of an undertaking with respect to dumped or subsidized goods given pursuant to subparagraph 23(c)(i), the Tribunal receives from the Deputy Minister, the importer or exporter of the goods or the complainant in the investigation respecting the goods a written request that an inquiry be commenced in respect of the dumped or subsidized goods, the Tribunal shall forthwith commence such inquiry and the Secretary shall forthwith inform the Deputy Minister of the day on which the Tribunal received the written request.

octroyée, compte tenu des renseignements dont il dispose,

(ii) il précise les marchandises objet de la décision provisoire;

**5** b) fait suspendre l'enquête sur les marchandises en cause;

c) veille à ce qu'avise de l'acceptation de l'engagement et de la prise des dispositions prévues aux alinéas a) et b):

(i) soit donné et publié conformément au paragraphe 16(6),

(ii) soit déposé auprès du Secrétaire, avec l'exposé des motifs à l'appui de sa décision provisoire et les pièces requises en l'espèce par les règles du Tribunal.

**15**

**24.** En cas d'acceptation d'un engagement, l'application du paragraphe 9(1) est suspendue, pour les marchandises objet de cet engagement, dès que le Sous-ministre rend la décision provisoire prévue à l'alinéa 20 23a) jusqu'à ce qu'il soit mis fin à l'engagement conformément au paragraphe 26(1).

**25.** (1) Sous réserve des paragraphes (2) et 26(2), si un avis est déposé conformément au sous-alinéa 23c)(ii), le Tribunal n'ouvre 25 pas d'enquête sur les marchandises en cause.

(2) Si, par écrit et dans les trente jours suivant l'avis donné conformément à l'alinéa 23c)(i), il en est requis par le Sous-ministre, l'importateur, l'exportateur ou le plaignant, 30 s'il en est, le Tribunal ouvre sans délai une enquête sur les marchandises sous-évaluées ou subventionnées et le Secrétaire avise sans délai le Sous-ministre de la date à laquelle le Tribunal a reçu cette requête.

Non-application des droits provisoires

Non-ouverture d'enquête

Non-ouverture d'enquête

Enquête du Tribunal ouverte sur demande

Where  
Provisional  
duty not to be  
applied

Tribunal not to  
commence  
inquiry

Tribunal to  
commence  
inquiry on  
request

Termination of  
undertaking

Deputy  
Minister to  
resume  
investigation

Termination of  
undertaking by  
Deputy  
Minister

Where  
undertaking  
terminated

(3) An order or finding of the Tribunal made under section 20 pursuant to an inquiry commenced under subsection (2) in respect of the dumping or subsidizing of any goods terminates any undertaking with respect to the dumping or subsidizing of the goods.

(4) Where the Deputy Minister is informed pursuant to subsection (2) of the day on which the Tribunal received a written request to commence an inquiry in respect of dumped or subsidized goods, he shall forthwith cause the investigation with respect to the goods to be resumed.

26. (1) Where, at any time after he has accepted an undertaking with respect to any dumped or subsidized goods, the Deputy Minister

(a) is satisfied that the undertaking has been or is being violated,

(b) is of the opinion that he would not have accepted the undertaking if the information that he then has had been available to him when he accepted the undertaking, or

(c) is satisfied that he would not have accepted the undertaking if the circumstances then prevailing had prevailed when he accepted the undertaking,

he shall forthwith

(d) terminate the undertaking;

(e) cause notice of the termination of the undertaking to be given and published as provided in subsection 16(6) and to be filed with the Secretary in writing; and

(f) cause the investigation with respect to the goods to be resumed.

(2) Where notice of termination of an undertaking with respect to any dumped or subsidized goods is given and published pursuant to paragraph (1)(e) and filed with the Secretary pursuant to that paragraph

(a) the preliminary determination of dumping or subsidizing made pursuant to paragraph 23(a) with respect to the goods shall be deemed to have been made on the day the undertaking is terminated; and

(3) Les ordonnances rendues ou les conclusions prises par le Tribunal en vertu de l'article 20 et consécutives à une enquête ouverte en vertu du paragraphe (2) mettent fin aux 5 engagements concernés.

Fin des  
engagements

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(4) Dès que le Secrétaire l'avise conformément au paragraphe (2), le Sous-ministre fait reprendre l'enquête qu'il a menée sur les marchandises en cause.

Reprise  
d'enquête

26. (1) Dans les cas où, après avoir accepté un engagement, le Sous-ministre:

a) ou bien est convaincu que cet engagement n'est pas honoré,

b) ou bien est d'avis qu'il n'aurait pas accepté cet engagement si les renseignements dont il dispose lui avaient été accessibles au moment de son acceptation,

c) ou bien est convaincu qu'il n'aurait pas accepté cet engagement si les circonstances avaient été les mêmes au moment de son acceptation,

il doit sans délai:

d) mettre fin à l'engagement;

e) en faire donner et publier avis conformément au paragraphe 16(6) et faire déposer cet avis auprès du Secrétaire;

f) faire reprendre l'enquête qu'il a menée sur les marchandises en cause.

10 Fin de  
l'engagement

(2) En cas de publication et de dépôt d'un avis conformément à l'alinéa (1)e):

30 Idem

a) la décision provisoire de dumping ou de subventionnement prévue à l'alinéa 23a) est réputée avoir été rendue à la date à laquelle il est mis fin à cet engagement;

b) le Tribunal ouvre sans délai une enquête au sujet du dumping ou du subventionnement des marchandises en cause.

(b) the Tribunal shall forthwith commence an inquiry in respect of the dumping or subsidizing of the goods.

(3) Where the Deputy Minister is satisfied that, for any reason, an undertaking no longer serves any useful purpose and that he is not required to terminate the undertaking under subsection (1), he may terminate the undertaking under this subsection by causing notice of such termination to be given and published as provided in subsection 16(6) and filed with the Secretary in writing.

(4) Where the Deputy Minister terminates an undertaking with respect to any dumped or subsidized goods under subsection (3), such termination terminates all proceedings under this Act respecting the dumping or subsidizing of the goods.

(5) An undertaking may be amended at any time in accordance with its terms.

27. (1) Within ninety days after  
(a) in the case of an investigation respecting the dumping or subsidizing of goods that is resumed pursuant to subsection 25(4), the Tribunal receives a written request pursuant to subsection 25(2) to commence an inquiry in respect of the goods, and

(b) in the case of an investigation respecting dumped or subsidized goods that is resumed pursuant to paragraph 26(1)(f), notice of termination of an undertaking with respect to the goods is given pursuant to paragraph 26(1)(e),

the Deputy Minister shall

(c) where, on the evidence available to him, he is satisfied in respect of any of those goods that

(i) the goods have been or are being dumped or subsidized, and  
(ii) the margin of dumping of or the amount of the subsidy on the goods and the actual or potential volume of the dumped or subsidized goods are not negligible,

make a final determination of dumping or subsidizing with respect to the goods in

(3) Dans les cas où le Sous-ministre est convaincu qu'un engagement n'a plus sa raison d'être et qu'il n'est pas tenu d'y mettre fin en vertu du paragraphe (1), il peut y mettre fin en vertu du présent paragraphe en faisant donner et publier, conformément au paragraphe 16(6), avis de sa décision et en faisant déposer cet avis auprès du Secrétaire.

(4) La décision que prend le Sous-ministre en vertu du paragraphe (3) clôture les procédures relatives au dumping ou au subventionnement des marchandises en cause.

(5) Il est toujours possible de modifier un engagement, conformément à ses termes.

27. (1) Dans les quatre-vingt-dix jours suivant:

a) la réception par le Tribunal de la requête visée au paragraphe 25(2), s'il s'agit de la reprise d'enquête prévue au paragraphe 25(4),  
b) la date à laquelle avis est donné conformément à l'alinéa 26(1)e), s'il s'agit de la reprise d'enquête prévue à l'alinéa 26(1)f),  
Sous-ministre, selon le cas:  
c) rend une décision définitive de dumping ou de subventionnement, précisant les marchandises objet de sa décision et donnant leur marge de dumping ou le montant de la subvention qui leur est octroyée, si, au vu des éléments de preuve dont il dispose, il constate les faits suivants:

(i) les marchandises ont été ou sont sous-évaluées ou subventionnées,  
(ii) la marge de dumping ou le montant de la subvention octroyée à ces marchandises ainsi que le volume réel ou éventuel de ces marchandises ne sont pas négligeables;  
d) fait clore l'enquête sur les marchandises au sujet desquelles, au vu des éléments de preuve dont il dispose, il n'en est pas

respect of which he is so satisfied by specifying the goods to which the determination applies and the margin of dumping of or the amount of the subsidy on such goods; or

(d) where, on the evidence available to him, he is not satisfied in accordance with paragraph (a) in respect of some or all of those goods, cause the investigation to be terminated with respect to the goods in 10 respect of which he is not so satisfied.

Idem (2) Subsection 18(2) applies, with such modifications as the circumstances require, in any case where a final determination of dumping or subsidizing is made under sub- 15 section (1).

Idem (3) Subsection 18(3) applies, with such modifications as the circumstances require, in any case where, pursuant to subsection (1), the Deputy Minister causes an investiga- 20 tion to be terminated with respect to any goods.

#### BASIC PRICES

Definitions (28. (1) In this section, “basic price”, in relation to any goods to which an order applies, means the lowest 25 of the normal values obtained by estimating the normal value of the goods in relation to each exporter of the goods to Canada for which, in the opinion of the Deputy Minister, there is sufficient information to make a useful estimate;

“investigation” “basic price” does not include any investigation in which a preliminary determination has been made under this Act;

“order” means an order under subsection 35 (2).

(2) Where

(a) one or more investigations respecting the dumping of goods have been initiated under section 16 and are pending, (b) the goods referred to in paragraph (a) are exported to Canada by two or more exporters and from one or more countries, and

arrivé à la constatation prévue à l’alinéa a).

5

(2) Le paragraphe 18(2) s’applique, avec les adaptations de circonstance, aux décisions définitives de dumping ou de subventionnement prévues au paragraphe (1).

Idem 5

(3) Le paragraphe 18(3) s’applique, avec les adaptations de circonstance, aux clôtures d’enquête prévues au paragraphe (1).

Idem

#### PRIX DE BASE

28. (1) Les définitions suivantes s’appliquent au présent article.

«décret» Un décret pris en application du paragraphe (2).

«enquêtes» Les enquêtes du Sous-ministre à l’exclusion de celles ayant donné lieu aux 15 décisions provisoires que prévoit la présente loi.

«prix de base» La plus basse des valeurs normales qu’ont des marchandises visées par un décret. Ces valeurs normales résultent de l’estimation de la valeur normale qu’ont ces marchandises pour chacun de leurs exportateurs au sujet desquels le Sous-ministre est d’avis que les renseignements sont suffisants pour permettre une 25 estimation utile.

«prix de base»

(2) Le gouverneur en conseil, par décret subordonné à la recommandation du Ministre et à l’agrément du ministre des Finances, 40 peut, si les conditions suivantes sont réunies, 30 ordonner au Sous-ministre d’établir le prix de base des marchandises désignées dans le décret:

Décret du gouverneur en conseil

“investigation”

“order”

Governor in Council may order

(c) the Governor in Council is of the opinion that the goods referred to in paragraph (a) are being dumped in Canada, that the dumping has caused, is causing or is likely to cause material injury or has caused or is causing retardation, and that by reason of

- (i) the complexity or novelty of the issues presented by the investigation or investigations,
- (ii) the variety of goods or number of persons involved in the investigation or investigations,
- (iii) the difficulty of obtaining satisfactory evidence in the investigation or investigations, or
- (iv) any other reason that he considers makes it unusually difficult or time consuming to complete the investigation or investigations,

it is not practicable to proceed with the investigation or investigations in the usual manner under this Act,

the Governor in Council may, on the recommendation of the Minister, made with the concurrence of the Minister of Finance, by order direct the Deputy Minister to determine the basic prices of such of those goods as are specified in the order.

Goods to which order applies

(3) Subject to such qualifications and restrictions as the Governor in Council may specify in the order, an order applies to all goods specified therein that are imported into Canada.

Notice of revocation or amendment of order

(4) Where an order is revoked or amended, the Deputy Minister shall cause notice of the revocation or amendment to be published and given as provided in paragraphs (6)(b) and (c).

Limitation on amendment

(5) An order shall not be amended in any way that extends its application to goods in respect of which it is not in effect at the time of the amendment.

Deputy Minister to determine basic prices and give notice

(6) Where the Deputy Minister is directed by order to determine the basic price of any goods, he shall

- (a) determine the basic price of such goods forthwith from such information as is available to him;

a) au moins une enquête de dumping ouverte en vertu de l'article 16 au sujet de ces marchandises est encore pendante;

b) ces marchandises sont exportées vers le Canada par au moins deux exportateurs, en provenance d'un ou de plusieurs pays;

c) le gouverneur en conseil est d'avis que ces marchandises sont sous-évaluées, que ce dumping soit cause, a causé ou est susceptible de causer un préjudice sensible soit cause ou a causé un retard sensible et qu'il n'est pas possible de mener les enquêtes habituelles prévues par la présente loi en raison, selon le cas:

- (i) de la complexité ou du caractère inédit des points soulevés par l'enquête,
- (ii) de la diversité des marchandises ou du nombre de personnes touchées par l'enquête,
- (iii) des difficultés rencontrées pour obtenir des éléments de preuve suffisants,
- (iv) de tout autre circonstance qui, selon lui, fait qu'il est exceptionnellement difficile ou long de terminer l'enquête.

(3) Un décret s'applique à toutes les marchandises importées qui y sont précisées, sous réserve des restrictions faites par le gouverneur en conseil.

Objet du décret

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(4) Le Sous-ministre fait publier et donner avis, conformément aux alinéas (6)b) et c), des annulations ou modifications de décrets.

Avis d'annulation ou de modification d'un décret

(5) Les modifications apportées à un décret ne peuvent viser des marchandises auxquelles il ne s'applique pas à la date de ces modifications.

Restriction aux modifications

(6) En cas de décret le visant, le Sous-ministre:

- a) établit, dans les meilleurs délais, le prix de base des marchandises en cause, d'après les renseignements dont il dispose;

Établissement du prix de base

(b) cause notice of the order to be published in the *Canada Gazette*; and  
(c) cause notice of the order and of the basic price determined by him under paragraph (a) to be given to every complainant in any investigation referred to in subsection (2) respecting such goods, all importers and exporters who may be affected by the order that are known to the Deputy Minister, the government of every country of export of the goods and such other persons as may be prescribed.

(7) Notwithstanding any provision of this Act, an order with respect to any goods terminates, as of the date it is made, any investigation referred to in subsection (2) respecting the dumping of such goods.

(8) The Deputy Minister may on his own initiative, and, subject to subsection (9), shall, whenever so requested by or on behalf of an exporter of the goods to Canada, re-determine the basic price of any goods determined by him pursuant to subsection (6) or re-determined by him pursuant to this subsection, on the basis of such information as is available to him at the time that he makes the re-determination and, where he re-determines the basic price of any goods pursuant to this subsection, the basic price as re-determined by him shall, on and after the day on which it is re-determined, be used in determining the duty payable in respect of the goods under section 7.

(9) The Deputy Minister is not required to re-determine the basic price of any goods pursuant to a request referred to in subsection (8) unless the request is accompanied by information from which it is reasonably apparent that the basic price of the goods as re-determined will be different from the basic price of the goods prevailing at the time the request is made.

(10) Where the Deputy Minister re-determines the basic price of any goods pursuant to subsection (8), he shall cause notice of the re-determination to be published and given as provided in paragraphs (6)(b) and (c).

Order  
terminates  
investigation

Re-determina-  
tion of basic  
price

Deputy  
Minister not  
required to  
re-determine

Notice of  
re-determina-  
tion

b) fait publier avis du décret dans la *Gazette du Canada*;  
c) fait donner avis du décret et du prix de base, établi en vertu de l'alinéa a), à chaque plaignant, s'il s'agit d'une enquête visée au paragraphe (2), aux importateurs et exportateurs qu'il sait devoir être touchés par le décret, au gouvernement de chaque pays d'exportation et aux autres personnes que prévoient les règlements.

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(7) Par dérogation à la présente loi, le décret clôt, à compter de la date où il est pris, toute enquête prévue au paragraphe (2).

Le décret clôt  
l'enquête

(8) Le Sous-ministre peut, de sa propre initiative, et, sur demande faite par un des exportateurs des marchandises vers le Canada ou en son nom, il doit, sous réserve du paragraphe (9), réviser d'après les renseignements dont il dispose, le prix de base de ces marchandises déjà établi conformément au paragraphe (6) ou au présent paragraphe; le cas échéant, tout nouveau prix de base sera, dès son établissement, à déterminer les droits auxquels l'article 7 assujettit les marchandises.

25 Nouveau prix  
de base

(9) Le Sous-ministre n'est pas tenu de donner suite à la demande prévue au paragraphe (8) si les renseignements accompagnant cette demande ne démontrent pas suffisamment que le prix de base sera différent.

30 Renseigne-  
ments  
insuffisants

(10) Le Sous-ministre fait publier et donner, conformément aux alinéas (6)b) et c), avis de tout nouveau prix de base établi en application du paragraphe (8).

Avis

Period order in effect

(11) Subject to subsection (12), an order with respect to any goods is in effect in respect of those goods for the shortest of

- (a) the period of three hundred and sixty-five days following the day on which the order is made;
- (b) such period as may be specified in the order; and
- (c) the period commencing on the day following the day on which the order is made and ending on the day that the order is amended by deleting those goods therefrom or is revoked.

Governor in Council may continue order in effect

(12) Where, during any period that an order is in effect pursuant to subsection (11) or this subsection in respect of any goods, the Tribunal reports to the Governor in Council pursuant to section 21 that the dumping of the goods is causing material injury or retardation or is likely to cause material injury, the order may, by order of the Governor in Council, made on the recommendation of the Minister, with the concurrence of the Minister of Finance, be continued in effect in respect of those goods for such further period of three hundred and sixty-five days or less following the expiration of the period for which it is in effect at the time that the report is made to the Governor in Council, as is specified in the order of the Governor in Council.

Notice of continuation of order

(13) Where an order is continued in effect by order of the Governor in Council pursuant to subsection (12), the Deputy Minister shall cause notice of the order continuing the order in effect to be published and given as provided in paragraphs (6)(b) and (c).

Determination by Dominion customs appraiser

#### DETERMINATIONS BY DOMINION CUSTOMS APPRAISER

##### 29. Where the Deputy Minister

- (a) has made a final determination of dumping or subsidizing under subsection 18(1) or 27(1), with respect to any goods, and
- (b) has received from the Tribunal pursuant to section 20 an order or finding described in any of sections 3 to 6 with respect to the goods to which the final determination applies,

(11) Sous réserve du paragraphe (12), la durée d'application d'un décret à des marchandises données est la plus courte des périodes suivantes:

- 5 a) les trois-cent-soixante-cinq jours suivant sa prise;
- b) la période qu'il prévoit;
- c) la période commençant le lendemain du jour de sa prise et se terminant le jour de son annulation ou celui de sa modification portant radiation des marchandises.

Durée d'application du décret

(12) Dans le cas où, au cours de la durée d'application d'un décret visé au paragraphe (11) ou au présent paragraphe, le Tribunal fait rapport, conformément à l'article 21, au 15 gouverneur en conseil à l'effet que le dumping des marchandises objet du décret cause un préjudice ou un retard sensibles ou est susceptible de causer un préjudice sensible, le décret peut, par décret du gouverneur en 20 conseil subordonné à la recommandation du Ministre et à l'agrément du ministre des Finances, être prorogé, à compter de la date prévue de sa cessation d'effet, d'une période de trois-cent-soixante-cinq jours ou de la 25 période plus courte que précise le décret.

Prorogation

(13) Le Sous-ministre fait donner et publier, conformément aux alinéas (6)b) et c), avis du décret de prorogation prévu au paragraphe (12).

Avis de prorogation

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#### DÉCISIONS DE L'APPRÉCIATEUR FÉDÉRAL DES DOUANES

##### 29. Après avoir:

- a) rendu la décision définitive de dumping ou de subventionnement prévue au paragraphe 18(1) ou 27(1),
- b) reçu, conformément à l'article 20, l'ordonnance ou les conclusions du Tribunal visées à l'un des articles 3 à 6 au sujet des marchandises objet de la décision définitive,

Décision de l'appréciateur fédéral des douanes

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he shall cause a Dominion customs appraiser to determine, not later than six months after the date of the order or finding,

(c) in respect of any goods released during the period described in subparagraph 4(b)(i) or (ii) or paragraph 5(b) or 6(b), whichever is applicable, that appear to be goods described in the order or finding, whether the goods so released are in fact goods described in the order or finding; 10 and

(d) the normal value and export price of or the amount of the subsidy on, as the case may be, the goods so released.

#### RE-DETERMINATIONS AND APPEALS

**30.** (1) Subject to this Act, where, subsequent to the making of an order or finding of the Tribunal under section 20 or an order of the Governor in Council under section 8 or 28, any goods are imported into Canada, a determination

(a) as to whether the imported goods are goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,

(b) of the normal value of or the amount of the subsidy on any such imported goods to which the order or finding of the Tribunal applies, and

(c) of the export price of any such imported goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,

made within thirty days after their release is final and conclusive unless the importer, after having paid all duties owing on the imported goods, makes, within ninety days from the making of the determination, a written request in the prescribed form to a Dominion customs appraiser for a re-determination of such determination.

(2) A Dominion customs appraiser may re-determine any determination referred to in subsection (1),

(a) in accordance with a request made pursuant to subsection (1); or

(b) in any case where he deems it advisable, within two years after the release of

le Sous-ministre fait déterminer par un appréciateur fédéral des douanes, dans les six mois suivant la date de l'ordonnance ou des conclusions:

5 c) l'applicabilité de l'ordonnance ou des conclusions aux marchandises dédouanées pendant la période prévue, selon le cas, au sous-alinéa 4b)(i) ou (ii), ou à l'alinéa 5b) ou 6b);

d) la valeur normale et le prix à l'exportation de ces marchandises ou le montant de la subvention qui leur est octroyée.

#### RÉVISIONS ET APPELS

**30.** (1) Sous réserve de la présente loi, lorsque des marchandises sont importées après la date de l'ordonnance ou des conclusions du Tribunal prévues à l'article 20 ou celle du décret prévu à l'article 8 ou 28, est 15 définitive une décision rendue dans les trente jours après leur dédouanement et qui détermine:

20 a) l'applicabilité de l'ordonnance, des conclusions ou du décret à ces marchandises,

b) la valeur normale de ces marchandises qui font l'objet de l'ordonnance ou des conclusions ou le montant de la subvention 25 qui leur est octroyée,

c) le prix à l'exportation de ces marchandises qui font l'objet de l'ordonnance, des conclusions ou du décret,

25 sauf si l'importateur, après avoir payé les droits exigibles sur ces marchandises, demande, dans les quatre-vingt-dix jours suivant la date de cette décision, à un appréciateur fédéral des douanes, par écrit et en la forme prescrite par le Sous-ministre, de réviser sa décision.

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(2) L'appréciateur fédéral des douanes peut réviser une décision rendue en vertu du paragraphe (1):

45 a) soit à la suite de demandes faites en 40 application de ce paragraphe;

Caractère définitif des décisions

Finality of determination and appraisal

Review by Dominion customs appraiser

Révision par l'appréciateur fédéral

the goods to which the determination applies.

(3) Subject to subsection (4), a determination or re-determination by a Dominion customs appraiser pursuant to section 29 or this section is final and conclusive unless the importer, within ninety days of the date of the determination or re-determination, makes a written request in the prescribed form to the Deputy Minister for a re-deter- 10 mination.

(4) The Deputy Minister may re-determine any determination or re-determination referred to in section 29 or this section made by a Dominion customs appraiser or other customs official in respect of any imported goods

- (a) in accordance with a request made pursuant to subsection (3);
- (b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in obtaining release of the goods;
- (c) at any time, for the purpose of giving effect to a decision of the Tariff Board, the 25 Federal Court of Canada or the Supreme Court of Canada with respect to the goods; and
- (d) in any case where he deems it advisable, within two years after the release of 30 the goods to which the determination referred to in section 29 or subsection 30(1), as the case may be, applies.

(5) Where, in accordance with this section, a re-determination as to whether any goods 35 are goods described in paragraph (1)(a) or a re-determination of the normal value or export price of or the amount of the subsidy on the goods has been made,

- (a) the importer shall pay any additional 40 duty payable with respect to the goods, or
- (b) a refund shall be made of the whole or a part of any duty paid in respect of the goods.

in accordance with the re-determination. 45

31. (1) A person who deems himself aggrieved by a re-determination of the Deputy Minister made pursuant to subsec-

b) soit, de sa propre initiative, dans les deux ans suivant le dédouanement des marchandises objet de la décision.

(3) Sous réserve du paragraphe (4), les décisions ou révisions de l'appréciateur fédéral des douanes prévues à l'article 29 ou au présent article sont définitives sauf si l'importateur, dans les quatre-vingt-dix jours suivant leur date, demande au Sous-ministre, par écrit et en la forme prescrite par le 10 Sous-ministre, de procéder à un réexamen.

Réexamen par  
le Sous-ministre  
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(4) Le Sous-ministre peut réexaminer les décisions ou révisions prévues à l'article 29 ou au présent article et rendues par un appréciateur fédéral ou tout autre agent des 15 douanes:

- a) à la suite d'une demande faite en application du paragraphe (3);
- b) dans les cas où l'importateur ou l'exportateur a fait une déclaration trompeuse 20 ou commis une fraude lors du dédouanement des marchandises;
- c) en vue d'exécuter une décision de la Commission du tarif, de la Cour fédérale ou de la Cour suprême portant sur ces 25 marchandises;
- d) de sa propre initiative, dans les deux ans suivant le dédouanement des marchandises objet de la décision rendue, selon le cas, en vertu de l'article 29 ou du paragraphe 30(1).

Idem

(5) Les révisions ou réexamens prévus au présent article entraînent, conformément à leurs termes, l'une des conséquences suivantes:

- a) acquittement par l'importateur des droits supplémentaires payables sur les marchandises;
- b) remboursement total ou partiel des droits déjà payés sur ces marchandises. 40

Effet de la  
révision ou du  
réexamen

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31. (1) Quiconque s'estime lésé par un réexamen effectué en application du paragraphe 30(4), peut en appeler à la Commis-

Appel à la  
Commission du  
tarif

tion 30(4) with respect to any goods may appeal therefrom to the Tariff Board by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Tariff Board within sixty days from the day on which the decision was made.

Publication of notice of appeal

(2) Notice of the hearing of an appeal under subsection (1) shall be published in the *Canada Gazette* at least twenty-one days prior to the day of the hearing, and any person who on or before that day enters an appearance with the Secretary of the Tariff Board may be heard on the appeal.

Order or finding of the Board

(3) On any appeal under subsection (1), the Tariff Board may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tariff Board is final and conclusive subject to further appeal as provided in section 32.

Appeal to Federal Court on question of law

32. (1) Any of the parties to an appeal under section 31, namely,

- (a) the person who appealed,
- (b) the Deputy Minister, or
- (c) any person who entered an appearance in accordance with subsection 31(2), if he has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,

may, within sixty days from the making of an order or finding under subsection 31(3), appeal therefrom to the Federal Court of Canada on any question of law.

Disposition of appeal

(2) The Federal Court of Canada may dispose of an appeal by making such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may

- (a) declare what duty is payable or that no duty is payable on the goods with respect to which the appeal to the Tariff Board was taken; or
- (b) refer the matter back to the Tariff Board for re-hearing.

sion du tarif en déposant, auprès du Sous-ministre et du secrétaire de la Commission, dans les soixante jours suivant la date du réexamen, un avis d'appel.

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(2) L'avis d'audition d'un appel interjeté en application du paragraphe (1) est publié dans la *Gazette du Canada* au moins vingt-et-un jours avant la date de l'audition. Peuvent être entendues les personnes qui, au plus tard le jour de l'audition, déposent auprès du bureau du secrétaire de la Commission du tarif un acte de comparution.

(3) La Commission du tarif saisie d'un appel en vertu du paragraphe (1) peut rendre les ordonnances ou prendre les conclusions indiquées en l'espèce et, notamment, déclarer soit quels droits sont payables soit qu'aucun droit n'est payable sur les marchandises visées par l'appel. Les ordonnances, conclusions et déclarations de la Commission sont définitives, sauf recours prévu à l'article 32.

Ordonnances ou conclusions de la Commission

32. (1) Dans les soixante jours suivant l'ordonnance ou les conclusions prévues au paragraphe 31(3), recours peut en être porté sur une question de droit devant la Cour fédérale par:

- a) la personne qui a interjeté l'appel prévu à l'article 31;
- b) le Sous-ministre;
- c) les personnes ayant déposé un acte de comparution en application du paragraphe 31(2) à condition qu'elles aient un intérêt suffisant et aient obtenu l'autorisation de cette cour ou d'un de ses juges.

(2) La Cour fédérale peut se prononcer sur le recours en rendant les décisions indiquées l'espèce et, notamment:

- a) déclarer soit quels droits sont payables soit qu'aucun droit n'est payable sur les marchandises visées par l'appel à la Commission du tarif;
- b) renvoyer l'affaire à la Commission du tarif pour une nouvelle audition.

Recours devant la Cour fédérale

Jugement de la Cour fédérale

(3) The provisions of section 48 of the *Customs Act* apply, with such modifications as the circumstances require, in any appeal taken under this section as if it were an appeal taken under section 48 of that Act.

#### GENERAL

**33.** Notwithstanding any provision of this Act, where the manufacturer, producer, vendor or exporter of any goods undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the countervailing duty that may be levied on the imported goods, the amount of the subsidy on the goods is the amount of the subsidy otherwise determined under this Act plus the amount of the indemnity, payment or reimbursement.

**34. (1)** Where duty is payable on any goods imported into Canada, the amount of the duty is, on and after the date on which it should have been paid, a debt due and payable to Her Majesty by the importer of the goods and such debt may be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.

(2) Where a debt is due and payable to Her Majesty by an importer pursuant to subsection (1), Her Majesty has a lien for the amount of the debt on any goods imported into Canada by the importer after the debt becomes due and payable and customs may withhold delivery of such goods until the debt is paid.

(3) Notwithstanding anything in this Act, where any duty payable under this Act in respect of goods has not been paid within thirty days after a demand for payment of the duty has been made pursuant to this Act, the Minister may, by notice in writing, require any person in Canada to whom the goods are sold to pay an amount in respect of the duty not exceeding the amount of the duty payable in respect of the goods sold to such person, which amount is, after such notice has been given, a debt due and payable to Her Majesty by such person and may

(3) Les appels interjetés et les recours portés en vertu du présent article sont assujettis, avec les adaptations de circonstance, aux dispositions de l'article 48 de la *Loi sur les douanes*.

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#### DISPOSITIONS GÉNÉRALES

**33.** Par dérogation à la présente loi, au montant de la subvention octroyée à des marchandises, établi en vertu de la présente loi, s'ajoute celui de l'indemnité versée, du paiement ou du remboursement effectué par le fabricant, le producteur, le vendeur ou l'exportateur des marchandises qui s'est engagé, de quelque manière que ce soit, vis à vis de l'importateur des marchandises ou de leur acheteur se trouvant au Canada, à payer en son nom ou à lui rembourser la totalité ou une partie des droits compensateurs exigibles sur les marchandises importées ou à l'en indemniser à cet égard.

**34. (1)** A partir du moment où ils auraient dû être payés, les droits payables sur des marchandises importées sont des créances de Sa Majesté sur l'importateur des marchandises et leur recouvrement, de même que les frais de justice afférents, peut être poursuivi devant tout tribunal compétent.

Créances de Sa Majesté

(2) A titre de garantie sur la créance prévue au paragraphe (1), Sa Majesté a un privilège sur les marchandises qu'importe l'importateur visé à ce paragraphe après que les droits sont devenus payables et les douanes ont, jusqu'à acquittement de la dette, un droit de rétention sur ces marchandises.

Privilège

(3) Par dérogation à la présente loi, s'il n'a pas été satisfait, dans les trente jours, à une demande de paiement, faite en vertu de la présente loi, des droits payables sur des marchandises en vertu de la présente loi, le Ministre peut, par avis écrit, exiger de toute personne se trouvant au Canada à qui les marchandises ont été vendues, l'acquittement de ces droits, jusqu'à concurrence de ceux payables sur les marchandises ainsi vendues. Ces droits sont dès lors des créances de Sa Majesté sur le destinataire de l'avis et leur recouvrement, de même que les frais de jus-

Recouvrement auprès des acheteurs

be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.

(4) Where an amount that is less than the duty payable in respect of goods imported into Canada is recovered from a person pursuant to subsection (3), such recovery is without prejudice to any recourse available to Her Majesty under subsection (1) with respect to the remainder of the duty payable. 10

**35.** (1) Subject to subsection (2), every order or finding of the Tribunal is final and conclusive.

(2) The Tribunal may, at any time after the making of an order or finding described in any of sections 3 to 6, review, rescind, change, alter or vary the order or finding and may rehear any matter before deciding it.

**36.** Where evidence or information relating to the business or affairs of any person that is in its nature confidential is given or elicited in the course of any proceeding under this Act, the evidence or information shall not be disclosed in any manner that will make it available for the use of any business competitor or rival of that person.

**37.** Where goods are sold to an importer in Canada, the rate of exchange to be used in converting the currency of any country other than Canada to Canadian currency for the purpose of applying any provision of this Act or the regulations is the rate prevailing in Canada on the date of the sale, or, where the date of the sale is unknown at the time the conversion is made, on the date of the shipment of the goods to Canada, for converting the currency of that country to Canadian currency.

## REGULATIONS

**38.** (1) The Governor in Council may make regulations

(a) prescribing anything that by this Act is to be or may be prescribed by regulation;

(b) specifying the circumstances and manner in which

(i) two or more dumping investigations,

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**38.** Le gouverneur en conseil peut, par règlement:

a) prescrire tout ce qui doit ou peut l'être par règlement;

b) préciser les cas où peuvent être réunies des enquêtes menées par le Sous-ministre, qu'il s'agisse d'au moins deux enquêtes de dumping ou de subventionnement ou qu'il

stice afférents, peut être poursuivi devant tout tribunal compétent.

(4) Le recouvrement effectué en vertu du 5 paragraphe (3) est, pour tout solde éventuel, sans préjudice des recours que prévoit le 5 paragraphe (1).

Recouvrement du solde

**35.** (1) Les ordonnances rendues et les conclusions prises par le Tribunal sont, sous réserve du paragraphe (2), définitives.

(2) Le Tribunal peut, dès qu'a été rendue 10 Révision une ordonnance ou qu'ont été prises des conclusions visées à l'un des articles 3 à 6, les réviser, les modifier ou les révoquer et il peut procéder à toute nouvelle audition nécessaire.

**36.** Les renseignements et les éléments de 15 preuve de nature confidentielle afférents aux activités d'une personne et fournis au cours de procédures prévues par la présente loi ne peuvent être divulgués de manière à pouvoir être utilisés par des concurrents de cette 20 personne.

**37.** Pour l'application de la présente loi et des règlements, le taux de change applicable, pour la monnaie d'un pays autre que le Canada, aux ventes à un importateur se trouvant au Canada est celui en vigueur au Canada le jour de la vente ou, si cette date n'est pas connue au moment de la conversion, celui en vigueur le jour de l'expédition des 35 marchandises vers le Canada. 30

Taux de change

**REGULATIONS**

**38.** Le gouverneur en conseil peut, par règlement:

a) prescrire tout ce qui doit ou peut l'être par règlement;

b) préciser les cas où peuvent être réunies 35 des enquêtes menées par le Sous-ministre, qu'il s'agisse d'au moins deux enquêtes de dumping ou de subventionnement ou qu'il

Règlements

Idem

Orders and finding of Tribunal final

Review of orders by Tribunal and rehearing

Confidential matter not to be disclosed

Foreign currency

Regulations

(ii) two or more subsidy investigations, or

(iii) one or more dumping investigations and one or more subsidy investigations, may be joined and carried on as one and the persons to whom and manner in which notice of such joining shall be given;

(c) defining the expression "agricultural product" for the purposes of this Act;

(d) defining the word "importer" for the purposes of this Act or any provision thereof; and

(e) generally for carrying out the purposes and provisions of this Act.

PROPOSED AMENDMENTS TO THE CUSTOMS  
TARIFF

"4. (1) The Governor in Council may, 15 by order, from time to time,

.....

(b) withdraw the benefit of the British Preferential Tariff, in whole or in part, from any British country or colony or 20 any protectorate or territory under British trusteeship that has received the said benefit, and from and after the date specified in such order the rates of customs duties set forth in the Most- 25 Favoured-Nation Tariff, the General Tariff or such other rates of customs duties, not exceeding those set forth in the General Tariff, as are set forth in a schedule annexed to the said order, as 30 mentioned in the said order, apply to goods the growth, produce or manufacture of any such British country, subject to this Act;

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(d) withdraw from any British country to which they have been extended rates of customs duties more favourable than those of the British Preferential Tariff, and from and after the date specified in 40 such order, the rates of customs duties set forth in the British Preferential Tariff, the Most-Favoured-Nation Tariff, the General Tariff or such other rates of customs duties, not exceeding 45 those set forth in the General Tariff, as

s'agisse d'au moins une enquête de dumping et d'au moins une enquête de subventionnement, la manière de les réunir et de les mener ainsi que les personnes à aviser et les modalités de l'avis;

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c) définir, pour l'application de la présente loi, l'expression «produit agricole»;

d) définir, pour l'application de la présente loi, le terme «importateur»;

e) en général, réaliser les objets de la présente loi et appliquer ses dispositions.

MODIFICATIONS PROPOSÉES AU TARIF DES  
DOUANES

"4. (1) Le gouverneur en conseil peut, par décret, de temps à autre,

Pouvoirs du  
gouverneur en  
conseil

.....

b) retirer, en totalité ou en partie, 15 l'avantage du Tarif de préférence britannique à tout pays, colonie ou protectorat britannique ou à tout territoire sous la tutelle britannique admis à participer audit avantage, et, à compter de la 20 date spécifiée dans ce décret et selon ce qui y est précisé, les taux de droits de douane qui figurent au Tarif de la nation la plus favorisée ou au Tarif général ou les autres taux de droits de 25 douane, ne dépassant pas ceux qui figurent au Tarif général, mentionnés dans une annexe jointe au décret, s'appliquent, sous réserve de la présente loi, aux marchandises cultivées, produites 30 ou fabriquées dans ce pays britannique;

.....

d) retirer à tout pays britannique auquel ils avaient été accordés les taux de droits de douane plus favorables que 35 ceux du Tarif de préférence britannique, et, à compter de la date spécifiée dans ce décret et selon ce qui y est ordonné, les taux de droits de douane qui figurent au Tarif de préférence britannique, au tarif 40 de la nation la plus favorisée ou au tarif général ou les autres taux de droits de douane, ne dépassant pas ceux qui figurent au

are set forth in a schedule annexed to the said order, as directed in the said order, apply to goods the growth, produce or manufacture of such British country, subject to this Act;

5

.....  
(f) withdraw the benefit of the Most-Favoured-Nation Tariff, in whole or in part, from any country to which it has been extended, and from and after the 10 date specified in such order the rates of customs duties set forth in the General Tariff or such other rates of customs duties, not exceeding those set forth in the General Tariff, as are set forth in a 15 schedule annexed to the said order, as directed in the said order, apply to goods the growth, produce or manufacture of such country, subject to this Act.”

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rent au Tarif général, mentionnés dans une annexe jointe au décret, s'appliquent sous réserve de la présente loi, aux marchandises cultivées, produites ou fabriquées dans ce pays britannique;

5

.....  
f) retirer, en totalité ou en partie, l'avantage du Tarif de la nation la plus favorisée à tout pays auquel il a été accordé et, à compter de la date spécifiée dans ce décret et selon ce qui y est ordonné, les taux de droits de douane qui figurent au Tarif général ou les autres taux de droits de douane, ne dépassant pas ceux qui figurent au Tarif général, mentionnés dans une annexe jointe au décret, s'appliquent, sous réserve de la présente loi, aux marchandises cultivées, produites ou fabriquées dans ce pays.»

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Definitions

“government”

“government”, in relation to any country other than Canada, includes any agency or institution acting for, on behalf of or under the authority of the government 25 of that country;

“specified”

“specified” means specified by the Governor in Council in an order under subsection (2);

“trade agreement”

“trade agreement” means any agreement 30 or arrangement relating to international trade to which the Government of Canada is a party.

Governor in Council may make orders

(2) Notwithstanding this or any other Act of Parliament, for the purpose of 35

(a) enforcing Canada's rights under a trade agreement in relation to a country, or

(b) responding to acts, policies or practices of the government of a country 40 that, as a result of discrimination or otherwise, adversely affect or lead directly or indirectly to adverse effects on trade in Canadian goods or services,

the Governor in Council may, by order, do 45 any one or more of the following things in relation to that country:

“7. (1) In this section,

“government” Les accords ou ententes ayant trait au commerce international, auxquels est partie le gouvernement 25 du Canada.

“gouvernement” S'entend en outre des institutions habilitées par le gouvernement d'un pays étranger à agir en son nom ou à le représenter.

Définitions

“accord commercial”

“gouvernement”

(2) Par dérogation à la présente loi et à toute autre loi du Parlement, le gouverneur en conseil peut, par un décret ayant pour but, selon le cas:

a) d'exercer les droits qu'un accord 35 commercial reconnaît au Canada à l'égard d'un pays,

b) de répliquer aux actes, politiques ou pratiques, discriminatoires ou autres, d'un gouvernement qui, directement ou 40 indirectement, ont un effet défavorable sur le commerce des marchandises ou des services canadiens,

prendre, à l'égard de ce pays, l'une ou l'autre des mesures de rétorsion suivantes:

Décret du gouverneur en conseil

(c) suspend or withdraw rights or privileges granted by Canada under a trade agreement or an Act of Parliament;

(d) make any goods the growth, produce or manufacture of that country or any class of such goods subject to a surtax in an amount, over and above the rate of customs duty specified in Schedule A for such goods or class of goods, not exceeding 33 ½ per cent *ad 10 valorem*;

(e) include in the Import Control List established under section 5 of the *Export and Import Permits Act* any goods the growth, produce or manufacture of that country; and

(f) establish, in respect of any goods or class of goods the growth, produce or manufacture of that country, rates of customs duty, not exceeding at the maximum the rate to which the customs duty on such goods or class of goods could be increased under paragraph (d), that vary from time to time as the quantity of such goods or class of goods imported into Canada during a specified period of time equals or exceeds specified totals.

c) suspendre ou retirer les droits ou les priviléges que le Canada lui a accordés en vertu d'un accord commercial ou d'une loi du Parlement;

(d) assujettir les marchandises ou catégories de marchandises cultivées, produites ou fabriquées dans ce pays à une surtaxe d'un montant s'ajoutant au taux des droits figurant à l'annexe A pour ces marchandises mais ne dépassant pas 33 10 ½ pour cent *ad valorem*;

(e) inscrire sur la liste de marchandises d'importation contrôlée, établie en vertu de l'article 5 de la *Loi sur les licences d'exportation et d'importation*, les marchandises cultivées, produites ou fabriquées dans ce pays;

f) établir, à l'égard des marchandises ou catégories de marchandises cultivées, produites ou fabriquées dans ce pays, des taux de droits de douane ne dépassant pas celui auquel les droits de douane applicables à ces marchandises ou catégories de marchandises pourraient être portés en vertu de l'alinéa d) et pouvant varier selon que la quantité de ces marchandises ou catégories de marchandises importées au Canada, pendant une période déterminée par décret du gouverneur en conseil pris en vertu du paragraphe (2), égale ou dépasse les totaux spécifiés dans ce décret.

Period of order and publication in the *Canada Gazette*

(3) An order under subsection (2) shall

(a) have effect for such period as is specified therein unless the order is sooner revoked; and

(b) be published in the *Canada Gazette*.

(3) Les décrets pris en vertu du paragraphe (2):

a) s'appliquent, sauf révocation, pendant la période qui y est spécifiée;

b) sont publiés dans la *Gazette du Canada*.

35 Durée d'application et publication

Removal from Import Control List

(4) Where, by order under subsection (2), any goods are included in the Import Control List referred to in paragraph (2)(e), such goods shall be deemed to have been removed from that List when the order ceases to have effect or is revoked.

(4) Les marchandises inscrites, par décret prévu au paragraphe (2), sur la liste de marchandises d'importation contrôlée visée à l'alinéa (2)e), sont réputées en avoir été rayées dès que le décret est révoqué ou cesse de s'appliquer.

40 Retrait de la liste de marchandises d'importation contrôlée

Order tabled in Parliament

(5) The Minister of Finance shall cause a copy of any order under subsection (2) to be laid before Parliament on any of the

(5) Le ministre des Finances fait déposer devant le Parlement une copie des décrets prévus au paragraphe (2) dans les

45 Dépôt des décrets

Regulations	<p>first fifteen days after the making thereof that either House of Parliament is sitting.</p>	<p>quinze jours suivant leur prise ou, si le Parlement ne siège pas, dans les quinze premiers jours de séance de l'une ou l'autre chambre qui suivent.</p>
Balance of payments surcharge	<p>(6) The Governor in Council may make regulations for carrying out the purposes of this section and for its enforcement.”</p>	<p>(6) Le gouverneur en conseil peut prendre les règlements nécessaires à l'application du présent article.»</p>
.....		
“7.1 (1) Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister of Finance, that Canada's external financial position and its balance of payments are such as to require special measures respecting Canadian imports, the Governor in Council may, by order, subject any goods the growth, produce or manufacture of any country or any class of such goods to a surcharge over and above the duties specified in Schedule A.	<p>“7.1 (1) Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister of Finance, that Canada's external financial position and its balance of payments are such as to require special measures respecting Canadian imports, the Governor in Council may, by order, subject any goods the growth, produce or manufacture of any country or any class of such goods to a surcharge over and above the duties specified in Schedule A.</p>	<p>“7.1 (1) Le gouverneur en conseil peut, par décret, assujettir les marchandises ou 10 catégories de marchandises cultivées, produites ou fabriquées dans un pays à une surcharge s'ajoutant aux droits figurant à l'Annexe A s'il est convaincu, à la suite d'un rapport du ministre des Finances, que 15 la position financière extérieure du Canada de même que les conditions de sa balance des paiements rendent nécessaire l'adoption de mesures spéciales visant les importations canadiennes.</p>
Amount of surcharge	<p>(2) The surcharge referred to in subsection (1) may be different in amount for 20 different goods or classes of goods, but shall not in any case exceed thirty-three and one-third per cent <i>ad valorem</i>.</p>	<p>(2) La surcharge prévue au paragraphe (1) peut varier selon les marchandises ou catégories de marchandises sans toutefois dépasser 33 1/3 pour cent <i>ad valorem</i>.</p>
Period surcharge in effect and publication in the Canada Gazette	<p>(3) An order made under subsection (1) shall</p> <ul style="list-style-type: none"> <li data-bbox="240 1118 705 1195">(a) have effect for such period as is specified in the order unless the order is sooner revoked; and</li> <li data-bbox="240 1195 705 1233">(b) be published in the <i>Canada Gazette</i>.</li> </ul>	<p>(3) Les décrets pris en vertu du paragraphe (1):</p> <ul style="list-style-type: none"> <li data-bbox="792 1118 1258 1175">a) s'appliquent, sauf révocation, pendant la période qui y est spécifiée;</li> <li data-bbox="792 1175 1258 1233">b) sont publiés dans la <i>Gazette du Canada</i>.</li> </ul>
Order ceases to have effect unless approved by Parliament	<p>(4) Notwithstanding paragraph (3)(a), where the period for which an order is specified to have effect will expire after the 180th day from the day on which the order is made, the order shall cease to have effect on such 180th day if Parliament is 35 then sitting or, if Parliament is not then sitting, on the expiration of the 15th sitting day after that day, unless before the order so ceases to have effect it is approved by a resolution adopted by both Houses of 40 Parliament.</p>	<p>(4) À moins d'avoir été ratifié par une résolution adoptée par les deux chambres du Parlement, un décret dont la durée d'application spécifiée est de plus de 180 jours après sa prise cesse néanmoins, par 35 dérogation à l'alinéa (3)a), de s'appliquer le 180<sup>ème</sup> jour suivant sa prise si c'est un jour de séance ou, sinon, le quinzième jour de séance ultérieur.</p>
Sitting day	<p>(5) For the purposes of subsection (4), a day on which either House of Parliament sits shall be deemed to be a sitting day.”</p>	<p>(5) Pour l'application du paragraphe (4), tout jour où l'une ou l'autre chambre du Parlement siège est un jour de séance.»</p>
.....		
Surtax in certain cases	<p>“8. (1)</p>	<p>“8. (1)</p>

Règlements

Surcharge visant la balance des paiements

Montant

Durée et publication

Résolution affirmative

Surtaxe en certains cas

.....  
 (2) Where at any time it appears to the satisfaction of the Governor in Council, as a result of

- (a) a report of the Minister of Finance,
- (b) an inquiry made by the Canadian Import Tribunal under section 21 of the *Special Import Measures Act*, or
- (c) in the case of any textile and clothing goods within the meaning of the *Textile and Clothing Board Act*, an inquiry or a review made by the Textile and Clothing Board under that Act,

that goods of any kind, the growth, produce or manufacture of any country, are 15 being imported into Canada under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive products, any goods of the same kind and the growth, produce or 20 manufacture of that country may, by order of the Governor in Council, when imported into such region or part of Canada and during such period after the making of the order as the order may specify, in addition 25 to the duties otherwise established, be made subject to a surtax

- (d) at a rate specified in the order, or

(e) at a rate specified in the order that varies from time to time as the quantity 30 of such goods imported into such region or part of Canada during a period specified in the order equals or exceeds totals specified in the order,

but no such rate shall, at the maximum, 35 exceed the rate that in the opinion of the Governor in Council is sufficient to prevent further such injury or the threat of such injury.

.....

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.....  
 (2) Si, à un moment quelconque, le gouverneur en conseil est convaincu, en se fondant:

a) soit sur un rapport du ministre des Finances,

b) soit sur une enquête menée, en vertu de l'article 21 de la *Loi sur les mesures spéciales d'importation*, par le Tribunal canadien des importations,

10

c) soit sur une enquête ou un examen effectué, en vertu de la *Loi sur la commission du textile et du vêtement*, par la Commission du textile et du vêtement sur des articles de textile et d'habille- 15 ment définis dans ladite loi,

que des marchandises de toute nature, qui ont été cultivées, produites ou fabriquées dans un pays, sont importées au Canada dans des conditions où elles causent ou 20 menacent de causer un préjudice grave à des producteurs canadiens de produits semblables ou directement concurrentiels, les marchandises de même espèce ainsi que les produits, cultivés ou autres, ou les 25 fabrications de ce pays peuvent, par décret du gouverneur en conseil, lorsqu'ils sont importés dans la région ou la partie du Canada et à l'époque, postérieure au décret, qui sont spécifiées dans le décret, 30 être assujettis, en plus des droits établis par ailleurs, à une surtaxe fixée selon l'un des taux suivants qui ne doit cependant pas dépasser celui que le gouverneur en conseil estime suffisant pour prévenir le préjudice 35 ou la menace de préjudice:

d) le taux spécifié dans le décret;

e) le taux spécifié dans le décret qui peut varier selon que la quantité des marchandises, importées dans cette 40 région ou partie du Canada et à l'époque spécifiées, égale ou dépasse les totaux spécifiés dans le décret.

.....

(4) La durée d'application d'un décret 45 pris en vertu du paragraphe (2) est la suivante:

Durée d'application du décret

a) s'il fait suite à un rapport du ministre des Finances, il cesse de s'appliquer

date of its making if Parliament is sitting on that day or, if Parliament is not sitting on that day, on the expiration of the 15th sitting day after that day, unless before the order so ceases to have 5 effect

(i) it is approved by a resolution adopted by both Houses of Parliament,  
(ii) the Canadian Import Tribunal 10 reports to the Governor in Council pursuant to section 21 of the *Special Import Measures Act* that the goods described in the report of the Minister of Finance are still being imported 15 into Canada from the country named in the report under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive products, or 20  
(iii) where the goods described in the report of the Minister of Finance are goods referred to in paragraph (2)(c), the Textile and Clothing Board reports to the Minister of Industry, 25 Trade and Commerce pursuant to the *Textile and Clothing Board Act* that the goods described in the report of the Minister of Finance are still being imported into Canada from the coun- 30 try named in the report under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive products, 35

in which case the order shall continue in effect after the expiration of such 180th day or 15th day, as the case may be; or

(b) an inquiry or a review referred to in paragraph (2)(b) or (c), the order shall 40 have effect for such period as is specified in the order.

Sitting day

(4.1) For the purposes of subsection (4), a day on which either House of Parliament sits shall be deemed to be a sitting day. 45

Resolution of Parliament revoking order

(4.2) Where an order made under subsection (2) continues in effect by reason of subparagraph 4(a)(i), (ii) or (iii) and a resolution praying that it be revoked is adopted by both Houses of Parliament, the 50

à l'expiration du 180<sup>ème</sup> jour suivant sa prise si c'est un jour de séance ou, sinon, le quinzième jour de séance ultérieur mais il continue à s'appliquer après ces dates si, selon le cas:

5 (i) il est ratifié par une résolution adoptée par les deux chambres du Parlement,  
(ii) le Tribunal canadien des importations a fait, conformément à l'article 10 21 de la *Loi sur les mesures spéciales d'importation*, rapport au gouverneur en conseil l'informant que les marchandises objet du rapport du ministre des Finances sont encore impor- 15 tées au Canada du pays que mentionne le rapport, dans des conditions où elles causent ou menacent de causer un préjudice grave à des producteurs canadiens de produits sem- 20 blables ou directement concurrentiels,  
(iii) la Commission du textile et du vêtement fait rapport, conformément à la *Loi sur la commission du textile et du vêtement*, au ministre de l'In- 25 dustrie et du commerce, si les marchandises objet du rapport du ministre des Finances sont celles décrites à l'alinéa (2)c), l'informant que ces marchandises sont encore importées 30 au Canada du pays que mentionne le rapport dans des conditions où elles causent ou menacent de causer un préjudice grave à des producteurs canadiens de produits semblables ou 35 directement concurrentiels;

b) s'il fait suite à une enquête ou un examen prévu à l'alinéa (2)b) ou c), il s'applique pendant la période qu'il prévoit. 40

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Interprétation

(4.1) Pour l'application du paragraphe (4), tout jour où l'une ou l'autre chambre du Parlement siège est un jour de séance.

(4.2) À moins de révocation préalable par le gouverneur en conseil, tout décret 45 pris en vertu du paragraphe (2) et qui a continué à s'appliquer pour l'une des raisons prévues à l'alinéa (4)a), cesse de s'ap-

Résolution de révocation

order shall cease to have effect on the day that the resolution is adopted or, if the adopted resolution specifies a day on which the order shall cease to have effect, on such specified day, unless the order is sooner revoked by the Governor in Council.

5

pliquer le jour de l'adoption d'une résolution de révocation par les deux chambres du Parlement ou, le cas échéant, le jour que prévoit cette résolution.

Notice in  
Canada Gazette

(4.3) Where an order made under sub-section (2)

(a) continues in effect by reason of sub- 10 paragraph 4(a)(i), (ii) or (iii), or  
(b) ceases to have effect by reason of a resolution of both Houses of Parliament, the Minister shall cause a notice of such continuation or cessation to be published 15 in the *Canada Gazette*."

5 Publication d'un avis

(4.3) Le Ministre fait publier dans la *Gazette du Canada* l'avis approprié en cas de:

a) continuation, en vertu de l'alinéa (4) a), d'un décret pris en vertu du paragraphe (2); 10  
b) révocation, par suite d'une résolution adoptée par les deux chambres du Parlement, d'un décret pris en vertu du paragraphe (2).»

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#### PROPOSED AMENDMENT TO THE EXPORT AND IMPORT PERMITS ACT

Import list of goods

"5. (1)

.....  
(2) Where at any time it appears to the satisfaction of the Governor in Council on 20 a report of the Minister made pursuant to

(a) an inquiry or a review made by the Textile and Clothing Board with respect to the importation of any textile and clothing goods within the meaning of 25 the *Textile and Clothing Board Act*, or  
(b) an inquiry made under section 21 of the *Special Import Measures Act* by the Canadian Import Tribunal in respect of any goods, 30

that goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to Canadian producers of 35 like or directly competitive goods, any goods of the same kind may, by order of the Governor in Council, be included on the Import Control List."

15 Liste visant l'importation de marchandises

#### MODIFICATIONS PROPOSÉES À LA LOI SUR LES LICENCES D'EXPORTATION ET D'IMPORTATION

Addition to Import Control List

«5. (1)

.....  
(2) Lorsque à un moment quelconque le gouverneur en conseil est convaincu, sur rapport du Ministre établi en application

a) d'une enquête ou d'un examen effectué par la Commission du textile et du vêtement relativement à l'importation d'articles de textile et d'habillement définis dans la *Loi sur la Commission du textile et du vêtement*, ou 20

b) d'une enquête menée, en vertu de l'article 21 de la *Loi sur les mesures spéciales d'importation* par le Tribunal canadien des importations relativement à des marchandises, 25

que des marchandises de tout genre sont importées ou seront vraisemblablement importées au Canada à des prix, en quantités et dans des conditions portant ou menaçant de porter un préjudice grave aux 35 producteurs canadiens de marchandises semblables ou directement concurrentes, toutes marchandises du même genre peuvent, par décret du gouverneur en conseil, être incluses dans la liste de marchandises 40 d'importation contrôlée.»

20 Addition à la liste de marchandises d'importation contrôlée















